TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1904

No. 204

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY, APPELLANT,

vs.

THE CHILE GOLD MINING COMPANY, JOHN H. CHEEVER, EDWARD L. WILLMORE, CARLOS WARNER, AND STEPHEN S. RAYMOND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

FILED MAY 31, 1904.

(16,176.)

(18,176.)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1901.

No 330.

THE BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY, APPELLANT,

vs.

THE CHILE GOLD MINING COMPANY, JOHN MacGINNISS, EDWARD L. WHITMORE, CARLOS WARFIELD, AND STEPHEN S. RAYMOND.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF MONTANA.

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1 Pleas before the Honorable Hiram Knowles, judge of the district court of the United States for the district of Montana, sitting in the circuit court of the United States, ninth circuit, district of Montana, at the February term, 1901, thereof.

Be it remembered that on the 15th day of April, 1898, the complainant filed its bill of complaint herein which is in the words and figures as follows, to wit:

2 In the Circuit Court of the United States, Ninth Circuit, for the District of Montana, Southern Division.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING Company (a Corporation), Complainant,
vs.
CHILE GOLD MINING COMPANY (a Corporation), JOHN MACGINNISS, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants.

Be it remembered that the complainant herein filed its bill of complaint on the 15th day of April, 1898, which is in words and figures as follows, to wit:

3 In the Circuit Court of the United States, Ninth Circuit, for the District of Montana, Southern Division. In Equity.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER MINING Company (a Corporation), Complainant,
vs.
CHILE GOLD MINING COMPANY (a Corporation), JOHN MACGINNISS, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants.

Bill of Complaint.

To the honorable judges of the circuit court of the United States, ninth circuit, district of Montana:

The Boston and Montana Consolidated Copper and Silver Mining Company, a corporation, organized and existing under the laws of the State of Montana, and a citizen of the State of Montana, files this its bill of complaint against the Chile Gold Mining Company, a corporation organized under the laws of the State of Montana and a citizen of the State of Montana, John MacGinness, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, all of Butte city, county of Silver Bow, State of Montana, and all citizens of the State of Montana; and thereupon your orator complains and says:

4 That your orator is now, and at all the times hereinafter mentioned was, a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal

place of business at Butte city, Silver Bow county, State of Montana.

That the defendant, The Chile Gold Mining Company, is now and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county, State of Montana.

That your orator is the owner and entitled to the possession of that portion of the following-described property known as and called the "Pennsylvania" Lode mining claim, lot number 172, situated in Summit Valley mining district, Silver Bow county, Montana, which is particularly bounded and described as follows, to wit:

Beginning at corner number one, from which the quarter section corner on the north boundary of section eighteen in township three, north range seven, west of the principal meridian for Montana bears north three degrees fifty-seven minutes, west seven hundred and thirteen feet distant, and corner number three of lot number sixty-four, the St. Lawrence claim, and corner number two of lot number one hundred twenty-six, the Little Ida claim, bears north eighty-three degrees, ten minutes east, four hundred and forty-nine feet distant Thence first course, magnetic variation, nineteen degrees forty-five minutes east, south eighty-eight degrees fifteen minutes, east fifty-six feet to a point on east end line of lot one hundred forty-seven, the Rob Roy Lode claim; for point of intersection of said lots 147 and 172, from which corner number five of said lot 147 bears south eleven degrees east two hundred and ninety-six feet distant; one thousand five hundred feet to corner number two. Thence second course magnetic variation twenty degrees east, south 4 degrees 30 minutes west 564.6 feet to a point on the north boundary line of mineral application 722, a placer claim from which the northwest corner of said mineral application 722, which is also the northeast corner of mineral application 686, a placer claim, bears west 183.9 feet, distant, six hundred feet to corner number three. Thence, third course, magnetic variation 20 degrees east, north 88 degrees 15 minutes west 181.3 feet to a point on the west boundary line of said mineral application 722, and east boundary line of said mineral application 686, from which the northwest corner of said mineral application 722 and the northeast corner of said mineral application 686 bears north 29.8 feet, distant, nine hundred and twenty-four feet to a point over a tunnel, from which the mouth of said tunnel bears south 58 feet, distant, eleven hundred and fifty-six and two-tenths feet to a point on the north boundary line of said mineral application 686, from which the northeast corner of said mineral application 686 bears east 974.4 feet distant, fifteen hundred feet to corner number four, from which the southwest location corner bears south four degrees 30 minutes west 48 feet distant; discovery shaft bears north 70 degrees 30 minutes east 827 feet distant; corner number five of lot 147 bears north 27 degrees 30 minutes east 344 feet distant, and corner number three of lot 146, the Grant Extension lode, bears south 36 degrees 45 min-

utes west 152 feet distant. Thence fourth course, magnetic variation 20 degrees east north four degrees 30 minutes east 325 feet to a point on south side line of said lot 147, for point of intersection of
6 said lots 147 and 172 from which corner number five of said lot 147 bears south 82 degrees 4 minutes east 135 feet distant; six hundred feet to corner number one, the place of beginning. Expressly excepting and including herefrom all that portion of the ground heretofore described, embraced in said mining claim or lot number 147; also mineral applications 686 and 722; and also that portion of the said Pennsylvania vein or lode, and also all veins, lodes or ledges throughout their entire depth, the tops or apices of which lie inside of such excluded ground. Also excepting and excluding therefrom all that portion of the said above-described Pennsylvania Lode claim described as follows, to wit: Beginning at the northeast corner of lot number 172, and running thence north 88 degrees 15 minutes west 130 feet; thence south 69 degrees 25 minutes east 136 feet; thence north 4 degrees 30 minutes east 44 feet, to the place of beginning, and containing an area of $\frac{7}{100}$ of an acre of ground.

That this complainant became and was and is the owner of the said premises in the following manner, to wit:

That on the 18th day of June, 1877, William Harris, Sr., and William Harris, Jr., duly located the said Pennsylvania Lode claim as a quartz lode mining claim.

That on the 13th day of January, 1879, the said William Harris, Sr., and William Harris, Jr., duly conveyed to John E. Lloyd, David L. Lloyd, and Thomas E. Lloyd, by regular deed of conveyance a one-half undivided interest in and to the said Pennsylvania Lode claim.

That on January 13th, 1879, he, said William Harris, Sr., and William Harris, Jr., duly conveyed to John H. Davis by
7 regular deed of conveyance an undivided one-sixth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to William Harris, Sr., by regular deed of conveyance an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to John Dunstan, by regular deed of conveyance a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

That on March 13th, 1880, David J. Lloyd conveyed to William W. Thomas by regular deed of conveyance an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 14th day of August, 1880, William Harris, Sr., and William Harris, Jr., conveyed to Thomas Griffith by regular deed of conveyance an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on July 16, 1882, Thomas C. Porter and Howell M. Thomas, the duly appointed, qualified and acting administrators of the estate of William H. Thomas, deceased, duly authorized and empowered,

conveyed by regular deed of conveyance to John E. Lloyd an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 19tl. day of July, 1882, the said John E. Lloyd by regular deed of conveyance conveyed to Jeremiah Griffith an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 15th day of August, 1883, the said William E. Harris, Jr., and Annie Harris, his wife, by regular deed of conveyance,
8 conveyed to Thomas Griffith an undivided one-eighth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of April, 1886, a United States patent for the said Pennsylvania Lode claim was duly issued by the United States to William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith and John Dunstan.

That on the 26th day of March, 1888, the said Jeremiah Griffith by regular deed of conveyance conveyed to Enoch Grim an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 31st day of March, 1888, the said John E. Lloyd, Margaret Lloyd, his wife, Jeremiah Griffith, Enoch Grim, John H. Davis and Laura Davis, his wife, William Harris, Jr., and Anna Harris his wife, Thomas Griffith and David J. Lloyd by John E. Lloyd, his attorney-in-fact, by regular deed of conveyance, conveyed to Thomas Couch all that portion of the said Pennsylvania Lode claim hereinbefore described as the property of the complainant, excepting a right of way to the Montana railway.

That on the 30th day of November, 1888, by regular deed of conveyance the said Thomas Couch and Rachel Couch, his wife, conveyed to this complainant, The Boston & Montana Consolidated Copper and Silver Mining Company, all that portion of the said Pennsylvania Lode claim hereinbefore described as the property of this complainant and that thereby and by virtue of the said conveyances the complainant became and was and is the owner of the said premises hereinbefore described.

That on or about the 28th day of March, 1898, the said de-
9 fendant wrongfully and unlawfully entered into the said premises hereinbefore described, and by underground workings and by tunnels, shafts, cross-cuts and levels, and extracted from the said premises large quantities of valuable ores, to wit: ten thousand (10,000) tons, more or less, and of the reasonable value of seventy-five thousand (75,000) dollars.

And that ever since the said date the said defendants have continued to extract and mine ores from the said premises belonging to this complainant, and are now mining and extracting ores therefrom and threaten to continue to do so unless this court shall by its injunction restrain and enjoin the said defendants from so doing.

That the said ground of this complainant is valuable almost exclusively for the minerals therein contained, and that the same is

very valuable for the copper and silver and gold ores which are found therein in large quantities, and that it is these ores that the defendants have extracted, and which they are now extracting and mining and threatening to continue to extract in the future.

That the said ground owned by the complainant, hereinbefore described is of the reasonable value of more than one hundred thousand dollars, and that the said ores which the defendants are extracting and threatening to extract are of the value in excess of fifty thousand dollars.

The complainant further alleges that it has no means of ascertaining the quantity or value of the ores which the said defendants are extracting or may extract from the said premises owned by the complainant, and that if the said defendants are permitted and
10 allowed to continue to extract the said ores from the said premises that it would be altogether uncertain and indefinite as to what amount of ores or the value thereof which may be extracted in the future as in the past, and that the complainant will be compelled to rely to a great extent upon the good faith and showing of the defendants as to the amount and value of the ores which they have heretofore and may hereafter extract from the said premises.

That unless the defendants are enjoined and restrained from mining and extracting the ores from the said premises of this complainant the said portion of the said Pennsylvania Lode claim, this complainant will be required to bring numerous actions for the determination of the damages which it has sustained and will sustain by reason of such trespasses, and that the said trespasses on the part of the said defendant are continuing from time to time, and that this complainant brings this action in order to avoid a multiplicity of actions in the premises.

That by reason of the said trespasses on the part of the said defendant on the premises of this complainant, this complainant has suffered and will continue to suffer great and irreparable injury and damages.

That on or about the 15th day of April, 1898, this complainant brought an action in the circuit court of the United States, the ninth circuit, for the district of Montana, southern division, against the said defendants to recover of the said defendants for the ores extracted from the said portion of the Pennsylvania claim, hereinbefore described, and that the said action is now pending in this court.

And, as showing the jurisdiction of this court to determine the said matters set forth in the said action, this complainant alleges:

11 That the determination of the said controversy between the said complainant and the said defendants, involves the construction of title twenty-three, chapter VI of the Revised Statutes of the United States, concerning mines and mineral lands, in this, to wit:

That the said Pennsylvania Lode claim owned and claimed by this complainant, as hereinbefore alleged, is a mining claim duly

located under the provisions of the statutes of the United States relative to the appropriation of mineral lands and that the same has been patented as a mining claim under the provisions of the said statutes.

That the said defendants are, or claim to be the lessees of or to have some interest in a portion of that certain quartz lode mining claim known as and called the Johnstown Lode claim, lot number 173, and also a portion of the Little Ida Lode claim, lot number 126, which said claims lie north of and partly adjoining and near to the said Pennsylvania Lode claim on the north; that plaintiff is not acquainted with the exact metes and bounds of said ground claimed by the defendants.

That the said Rarus Lode claim, Johnstown Lode claim, and Little Ida Lode claim, are mineral claims located under the laws of the United States relative to the appropriation and location of mineral lands, and complainant is informed and believes and therefore alleges that the said claims or some of them have been patented by the United States to various parties, and that such patents were issued under and by virtue of the statutes of the United States relative to the patenting of mineral lands upon the public domain.

12 That as complainant is informed and believes, and therefore alleges, the said defendants claimed the right to enter upon the premises of this complainant, to wit, that portion of the Pennsylvania Lode claim above described, by reason of the fact that certain veins, leased or claimed by the defendants or in their possession have their tops or apices within the ground owned or claimed as a part of the Rarus Lode claim, or a portion of the Johnstown Lode claim, or a portion of the Little Ida Lode claim, and that defendants assert the right to follow such veins on their downward course or dips although the same so far depart from a perpendicular as to depart from the ground leased or claimed by the defendants and enter the premises owned or claimed by this complainant, to wit, that portion of the Pennsylvania Lode claim hereinbefore described.

But complainant denies and disputes the fact that the said veins upon which the said defendants have mined within the lines of the Pennsylvania Lode claim, even if such veins have their apices in the said Rarus Lode claim, or said Johnstown Lode claim, or said Little Ida Lode claim, which complainant does not admit, are such veins as can be followed on their dip beyond the lines of said lode claims and into the ground or premises of this complainant; but alleges the facts to be, that the said veins are broken and intersected by faults in such a manner that the same cannot be traced or followed from the said Rarus or Johnstown, or Little Ida Lode claims into the Pennsylvania Lode claim and that therefore the said defendants have no right to enter upon the ground of this complainant, to wit: the said Pennsylvania Lode claim, for

13 the purpose of extracting ores therefrom by reason of their claim upon or interest in the apices of any veins within the Rarus or Johnstown or Little Ida Lode claims.

And this complainant further shows that the veins upon which the defendants have been extracting ore within the premises of this complainant, if they or any of them have their apices on the said Rarus or Johnstown or Little Ida claims, which complainant does not admit, do not in their course or strike depart from the end lines of the defendants' claims or possessions, but that the said depart from the side lines of such claims in such a manner as to prohibit the said defendants from following the same beyond the said lines of said lode claim into complainant's portion of the said Pennsylvania claim.

That there are several veins which the defendants claim the right to follow on their dip beyond the side lines into the ground of this complainant, the said Pennsylvania Lode claim, but that neither of the said veins in their course or strike depart from the end lines of the said Rarus or Johnstown or Little Ida Lode claims, if they have their apice- within said lode claims at all; but complainant alleges that the ground in which the defendants claim some interest as aforesaid, was not so located or situated as to have any end lines whatever as provided by the statutes of the United States in such cases and in consequence of such failure upon the part of the locator or locators of the ground or claims leased or owned by the defendants, to mark the same with end lines parallel or to locate the same along the veins, but on the contrary having located the same across the veins, the defendants and their lessors or grantors have no extralateral rights in or to any of the veins in their said ground, and are not
14 entitled to follow the same into or upon the ground of this complainant and the said portion of the said Pennsylvania Lode claim.

And complainant further shows that a patent was issued by the United States of America to Stainislas E. Hirbour and others to that certain quartz lode claim known as and called the Rarus claim hereinbefore referred to, a copy of which patent is hereto attached, marked "Exhibit A" and made a part of this complaint.

And complainant further shows that a patent has been granted by the United States of America to William Harris, Sr., and others to that certain quartz lode claim, known as and called the Johnstown lode claim, a copy of which patent is hereto attached, marked "Exhibit B" and made a part of this bill.

And as showing that the questions involved in this controversy are questions arising under the statutes of the United States and involving the construction thereof, complainant shows and alleges that the said defendants herein claimed to be the lessees or to have some interest in a portion of the ground patented under the said Johnstown and Rarus patents and that by virtue of the said Rarus patent and that they, the said lessors and grantors, have acquired thirteen hundred and eighteen linear feet of what is designated and called the Rarus lode, and it is contended by the said defendants that under and by virtue of the said Rarus patent that they and their said lessors and predecessors in interest were granted thirteen hundred and eighteen linear feet to the Rarus lode, extending from

what is known as the east end line of the Rarus claim to an imaginary or projected line of the Rarus location.

And complainant further shows that the surface ground
15 patented to the lessors or predecessors in interest of defendants to the Rarus Lode claim does not include to exceed three hundred linear feet of the said Rarus lode as shown in yellow shadings on map attached to Rarus patent, but that notwithstanding the fact that the surface ground granted by the said Rarus patent did not cover or extend over the said Rarus lode the defendants contend and claim that the said patent of the Rarus claim, granted to them and their lessors and predecessors in interest, the said Rarus Lode claim beyond the surface ground granted by the Rarus patent and to the full extent thereof of 1,318 linear feet; and also contend and claim that by reason of the ownership of the said lode for the length aforesaid, and that by reason of the fact that the same passes through the east end line of the Rarus claim as patented and the west end line of the original location of the said claim, that they are entitled to follow said veins on their courses or dips into the earth and without the lines of the Rarus claim both as originally located and as patented.

Your complainant further shows that a large quantity of the ground which it is claimed by the defendants was originally included within the location of the Rarus claim has been patented under the said Johnstown patent, hereinbefore referred to and as shown by the portion shaded in yellow in the plat attached to the Johnstown patent. That notwithstanding that a portion of the Rarus location was patented under the Johnstown claim, the defendants contend and claim that only the surface ground of the Johnstown claim was patented to the patentees therein named and that all veins lying within the original location lines of the Rarus claim were patented to the claimants under the Rarus claim,
16 and that defendants or their lessors or grantors are entitled to claim the said veins extending through the Johnstown patent under and by virtue of the Rarus patent, and that its extralateral rights should be determined by the Rarus and not by the Johnstown patent.

Complainant further shows that it disputes each and every one of the claims made by the defendants relative to the construction of the said several patents and claims that all veins whose apices lie within the Johnstown patent must be governed and regulated in extralateral rights, if any they have under the Johnstown patent and not under and by virtue of the Rarus patent.

And complainant further shows that the defendants claim that if they have no right to follow the veins within the lines of the original Rarus location, by virtue of the said Rarus patent, that they have a right to follow the same under and by virtue of the Johnstown patent, or the Johnstown and Rarus patents combined, under and beneath that portion of the Pennsylvania Lode claim belonging to this complainant, but opposed to this contention the complainant contends and insists that the defendants have no right to follow any vein having its apex within either the Johnstown or

Rarus patents under any circumstances into or under the Pennsylvania Lode claim at any point of the east of the intersection of the south side line of the Johnstown patent within the south side line of the original Rarus location.

And complainant further shows that the said defendants contend that the complainant cannot under any circumstances obtain any relief for ores extracted within that portion of the premises owned by it without first showing that the apices of the veins from
17 which the ores were extracted are within the surface lines of the ground owned and claimed by the complainant, whereas complainant contends that *prima facie* it is the owner of all ores found within its boundaries extended downward into the earth until it has been shown that some other persons or company has some right thereto by reason of the ownership of the apex of the vein within some other claim.

The complainant further shows that it is claimed by the defendants that the apex of the veins from which the ores in question were extracted is divided in that portion thereof, is claimed by the defendants as part of the Rarus Lode claim, and a portion thereof upon the Johnstown Lode claim and a portion thereof upon the Pennsylvania Lode claim.

And defendants claim that by reason of said divided apex, that they may claim the right to follow the said vein beneath the surface and without the side lines of the Rarus and the Johnstown Lode claims under and by virtue of either or both of the said claims at their election.

Complainant alleges that if any such vein exists as is claimed by the defendants that they have no extralateral rights by reason of the fact that the same has a divided apex.

Wherefore, your complainant prays that the said defendants, Chile Gold Mining Company, John MacGinniss, Edward L. Whitmore, Carlos Warfield and Stephen S. Raymond, their servants, agents, attorneys clerks, workmen and employees, be by this court forever enjoined and restrained from mining or extracting any ores from within the limits of that portion of the said Pennsylvania Lode claim, hereinbefore described, and from removing there-
18 from any ores which have heretofore been extracted therefrom or which may hereafter be extracted therefrom, and that until the hearing of the application of this complainant for an injunction, and pending the determination of the title to the said premises that the said defendants, their agents, servants, attorneys, clerks, workmen and employees be restrained and enjoined from mining or extracting ores from within the said portion of the said Pennsylvania Lode claim hereinbefore described and from removing any ores which they may have extracted therefrom, or may hereafter extract therefrom.

Your complainant further prays this honorable court to grant unto your complainant, not only a writ of injunction conformable to the prayer of this bill, but also a writ of subpœna of the United States of America, issuing out of and under the seal of this court to be directed to the said Chile Mining Company, John MacGinnis,

Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, defendants, commanding them by a day certain to appear before your honors in the court aforesaid and answer unto this bill of complaint and abide the order and decree of this court and for such other and further relief as may be meet and equitable in the premises.

W. H. DE WITT,
JOHN F. FORBIS, AND
L. O. EVANS,
Of Butte, Montana, Solicitors and Counsel for Complainants.
BOSTON & MONTANA CONSOLIDATED COPPER AND SILVER MINING COMPANY,
By L. O. EVANS.

19 UNITED STATES OF AMERICA, } ss :
District of Montana, }

On this 15th day of April, 1898, before me, personally appeared L. O. Evans, who being first duly sworn, made solemn oath that he is one of the attorneys and solicitors for the complainant in the above-entitled bill, and that all the officers of the said complainant are absent from the district and State of Montana; that he has read the foregoing bill of complaint and knows the contents thereof and that the same is true.

L. O. EVANS.

Subscribed and sworn to before me this 15th day of April, 1898.
F. W. BACORN,
Notary Public for Silver Bow County, Montana.

COMPLAINANT'S EXHIBIT "A."

THE UNITED STATES OF AMERICA.

General Land Office No., 9457; mineral certificate No. 993.

To all to whom these presents shall come, Greeting:

Whereas, in pursuance of the provisions of the Revised Statutes of the United States, chapter six, title thirty-two, there have been deposited in the General Land Office of the United States the plat and field-notes of survey of the claim of Stanislas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, upon the Rarus lode, accompanied by the certificate of the register of the land office at Helena, in the
20 Territory of Montana, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said Stanislas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, did on the twelfth day of May, A. D. 1883, enter and pay for said mining claim or premises, being mineral entry No. 993, in the series of said office, designated by the surveyor general as lot No. 179, embracing a por

tion of section eighteen (18) in township three (3) north of range seven (7) west of the principal meridian, in the Summit Valley mining district, in the county of Silver Bow and Territory of Montana, in the district of lands subject to sale at Helena, containing two and ninety-eight hundredths ($\frac{98}{100}$) acres of land, more or less and according to the returns on file in the General Land Office, bounded, described and platted as follows, with magnetic variations at twenty (20) degrees east, to wit: Beginning at corner number one, a granite stone 16 x 13 x 8 inches in size, marked "L. M. C. 179," from which corner number one of lot No. 113, patented to W. J. McNamara *et al.*, with their claim upon the Mountain View lode, bears south fifty-seven (57) degrees, fifty-seven (57) minutes west at the distance of one hundred and seventy (170) feet, and the quarter-section corner on north boundary of section eighteen (18) in township three (3) north of range seven (7) west, of the principal meridian, bears north eighty-five (85) degrees, eighteen (18) minutes and forty (40) seconds west at the distance of seven hundred and eighty-four and one-tenth ($784\frac{1}{10}$th) ft.; thence from said corner number one south twenty-five (25) degrees forty (40) minutes west, thirty-five (35) feet to a granite stone 18 x 18 x 6 inches in size marked "P. L. M. C. 126–179," situate on north-
21 erly boundary of lot No. 126, made for the Little Ida lode, seventy-two and five-tenths ($72\frac{5}{10}$ths) feet to a granite stone 18 x 16 x 4 inches in size, marked "P. I. M. C. 173–179," situate on northerly boundary of lot No. 173, made for the claim of William Harris, Sr., *et al.*, upon the Johnstown lode, four hundred and twenty-two (422) feet to corner number 2, a granite stone 24 x 8 x 6 inches in size with mound of stones marked "2 M. C. 179," from which corner number one of said lot No. 126, the same being corner No. 2 of lot No. 64, patented to C. X. Larabie with his claim upon the St. Lawrence lode, bears north thirty-five (35) degrees, thirty-four (34) minutes west at the distance of two hundred and ninety (290) feet, and corner number one of said lot No. 173, bears north thirty-one (31) degrees, twenty-four (24) minutes west at the distance of three hundred and thirty-nine (339) feet; thence from said minutes east, two hundred and seventy-seven (277) feet to corner No. 2, south sixty-nine (69) degrees twenty-five (25) — a granite stone 18 x 18 x 6 inches in size, marked "P. I. M. C. 126–179," situate on southerly boundary of said lot No. 126, from which corner number three of said lot No. 126, bears north seventy-two (72) degrees, fifty-two (52) minutes east at the distance of four hundred and eighty-two (482), seven hundred (700) feet, to a granite stone 22 x 8 x 6 inches in size, marked "P. I. M. C. 173–179," situate on southerly boundary of said lot No. 173, from which corner No. 3 of said lot No. 173, bears north eighty-five (85) — thirty (30) minutes east at the distance of five hundred and sixty-seven (567) feet, eight hundred and seventy-one (871) feet to a granite stone 18 x 7 x 4 inches in size marked "P. I. M. C. 172–179," situate on northerly boundary of lot No. 172 made for the claim of William Harris, Sr., *et al.*, upon the
22 Pennsylvania lode, from which corner number two of said lot No. 172 bears south eighty-eight (88) degrees fifteen (15) minutes east at the distance of one hundred and thirty (130) feet; number

three shaft bears north fifteen (15) degrees west at the distance of one hundred and ninety-one (191) feet, and number two shaft bears north twenty-two (22) degrees east at the distance of one hundred and thirty-two (132), ten hundred and seven (1007) feet to a granite stone 20 x 12 x 4 inches in size, marked "P. I. M. C. 172–179," situate on easterly boundary of said lot No. 172, from which corner No. 2 of said lot No. 172, bears north four (4) degrees thirty (30) minutes east at the distance of forty-four (44) feet, and discovery shaft bears north ten (10) degrees east at the distance of one hundred and forty-three (143) feet, thirteen hundred and sixteen (1316) feet to corner number three, a granite stone 22 x 10 x 6 inches in size, marked "3 M. C. 179," from which corner No. 2, of said lot No. 172, bears north sixty-one (61) degrees twenty (20) minutes west at the distance of three hundred and twenty-one (321) feet; thence from said corner No. 3 north twenty-five (25) degrees forty (40) minutes east, one hundred and twelve (112) feet to a point from which the face of a tunnel bears north sixty-five (65) degrees west at the distance of eighty-seven (87) feet, four hundred and forty (440) feet to corner number four, a granite stone 18 x 8 x 6 inches in size, marked "4 M. C. 179"; thence north seventy (70) degrees nine (9) minutes two hundred and forty-six (246) feet to a granite stone 20 x 8 x 5 inches in size, marked "P. U. M. C. 173–179," situate on easterly boundary of said lot No. 173, from which corner number three, of said lot No. 173, bears south eight (8) degrees, thirty (30) minutes east at the distance of two hundred and nineteen (219) feet, seven hundred and sixty-eight (768) feet to a granite stone 18 x 8 x 6
23 inches in size marked "P. U. M. C. 126–179," situate on easterly boundary of said lot No. 126, from which corner number three of said lot No. 126 bears south eight (8) degrees thirty (30) minutes, at the distance of one hundred and fifty (150) feet eleven hundred and sixty-eight (1168) feet to a granite stone 18 x 8 x 8 in size, marked "P. U. M. C. 173–79," situate on northerly boundary of said lot No. 173, from which point of intersection of westerly boundary of this claim, with the northerly boundary of said lot No. 173, bears south eighty-five (85) degrees thirty (30) minutes west at the distance of one hundred and seventy-four (174) feet; twelve hundred and seventy-eight (1278) feet to a granite stone 16 x 10 x 6 inches in size, marked "P. U. M. C. 126–179," situate on northerly boundary of said lot No. 126, from which the point of intersection of westerly boundary of this claim with the northerly boundary of said lot No. 126 bears south seventy-two (72) degrees, west at the distance of fifty-six (56) feet, thirteen hundred and eighteen (1318) feet, to the place of beginning, containing two and ninety-eight-hundredths ($2_{1\,0\,0}^{9\,8}$ths) acres of land, more or less and embracing thirteen hundred and eighteen (1318) linear feet of the said Rarus lode, as represented by yellow shading in the following plat:

(Here follows map marked p. 24.)

13778

No. 330.
B+M.C.C.V.S.Mc Co
v.
C.G.M. Co et al.
} f. 24

Plat

of the claim of

STANISLAS E. HIRBOUR ET AL

upon the

Rarus Lode

Summit Valley Mining District, Silver Bow County, Montana.

Containing 298 Acres.

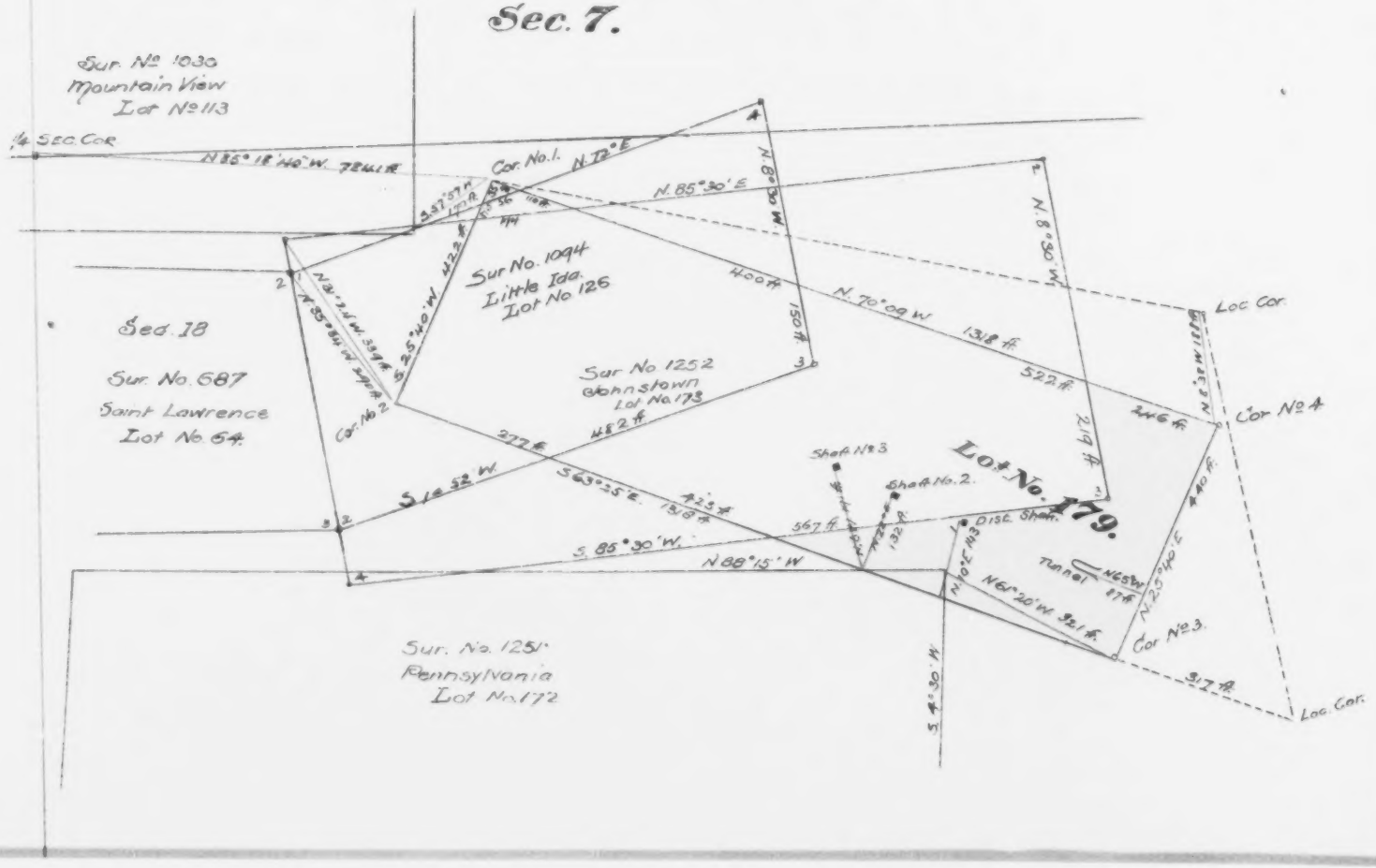
Scale 200 ft to an Inch.

VAR. 20° E.

T. 3. N. R. 7. W.

(Surveyed)

Sec. 7.



25 Now know ye, that the United States of America, in consideration of the premises, and in conformity with said Revised Statutes of the United States, have given and granted, and by these presents do give and grant, unto the said Stainslas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, and to their heirs and assigns, the said mining premises hereinbefore described as lot No. 179, embracing a portion of section eighteen (18) in township three (3) north of range seven (7) west of the principal meridian, with the exclusive right of possession and enjoyment of all the land included within the exterior lines of said survey not herein expressly excepted from these presents, and of thirteen hundred and eighteen (1318) linear feet of the said Rarus vein, lode, ledge, or deposit for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all other veins, lodes, ledges or deposits throughout their entire depth, the tops or apexes of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey; provided, that the right of possession hereby granted to such outside parts of said veins, lodes, ledges or deposits, shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges or deposits. Excepting and excluding, however, from these presents, all that portion of the surface ground hereinbefore

26 described, which is embraced by said lots Nos. 126, 172, and 173. And provided further, that nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another: To have and to hold, the said mining premises, together with all the rights, privileges, immunities and appurtenances of whatsoever nature thereunto belonging unto the said Stanislas E. Hirbour, Joseph Ortyer, Eugene Fournier, Peter Tetrault, and the heirs of Michael Roy, deceased, and to their heirs and assigns forever, subject nevertheless, to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 179, with thirteen hundred and eighteen (1318) linear feet of the Rarus vein, lode, ledge, or deposit for the length aforesaid throughout its entire depth as aforesaid, together with all other veins, lodes, ledges, or deposits throughout their entire depths, as aforesaid, the tops or apexes of which lie inside the exterior lines of said survey.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into, or underlie the premises

hereby granted, for the purpose of extracting and removing the ore from such other vein, lode, ledge or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and approved water rights for mining, agriculture, manufacturing or other purpose, the rights to ditches and reservoirs used in connection with such water rights as may be
27 recognized and acknowledged by the local laws, customs and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Montana may provide for working the mining claims or premises hereby granted, involving easements, drainage and other necessary means to its complete development.

In testimony whereof, I, Chester A. Arthur, President of the United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the twenty-fifth day of June, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States one hundred and eighth.

By the President,

CHESTER A. ARTHUR,
By W. H. COOK, *Secretary.*

[General Land Office Seal.]

S. W. CLARK,
Recorder of the General Land Office.

"Examined." Recorded, vol. 112, pages 345 to 348, inclusive. Filed for record, February 23rd, A. D. 1895, at fifty minutes past nine o'clock a. m.

C. Q. JOHNSON,
County Recorder,
By A. E. WHIPPS, *Deputy.*

STATE OF MONTANA, } ss :
County of Silver Bow, }

I, John Weston, county clerk and recorder of said county, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument, as recorded at page
28 190 in Book C of U. S. Patents, Records of Silver Bow County, Montana.

Attest my hand and seal of said Silver Bow county hereunto affixed this 18th day of May, 1897.

JOHN WESTON,
County Clerk and Recorder,
By J. E. MORAN, *Deputy.*

COMPLAINANTS' EXHIBIT "B."

UNITED STATES OF AMERICA.

General Land Office No., 9893; mineral certificate No. 1012.

To all to whom these presents shall come, Greeting:

Whereas in pursuance of the provisions of the Revised Statutes of the United States, chapter VI, title 32, there has been deposited in the General Land Office of the United States, the plat and field-notes of survey of the claim of William Harris, Sr., William Harris, Jr., John E. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, upon the Johnstown lode, accompanied by the certificate of the register of the land office at Helena, in the Territory of Montana, whereby it appears that, in pursuance of the said Revised Statutes of the United States, the said William Harris, Sr., William Harris, Jr., John E. Lloyd, and David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, did, on the first day of December, A. D. 1883, enter and pay for said mining claim or premises, being mineral entry No. 1012
29 in the series of said office, designated by the surveyor general as lot No. 173, embracing a portion of section eighteen (18), in township three (3) north of range seven (7) west of the principal meridian in the Summit Valley mining district, in the county of Silver Bow and Territory of Montana, in the district of lands subject to sale at Helena, containing eighteen acres of land, more or less, and according to the returns on file in the General Land Office, bounded, described and platted as follows, with magnetic variations as hereinafter stated, to wit: Beginning at corner number one, a granite stone 19 x 10 x 6 inches in size, "I. M. C. 173," from which the quarter-section corner on north boundary of section eighteen in township three (3) north of range seven (7) west of the principal meridian bears, with magnetic variation at twenty degrees east, north 69 degrees, 49 minutes, and 27 seconds west at the distance of (449.7) four hundred and forty-nine and seven-tenths feet, corner number two of lot number one hundred and twenty-seven (127), the Smelter Lode claim bears north 63 degrees east at the distance of two hundred and eighteen (218) feet, and corner number one of lot No. 113, the Mountain View Lode claim bears east at the distance of two hundred and twenty-three (223) feet; thence, from said corner number one, north 85 degrees and 30 minutes east, seventy-three (73) feet to a granite stone 18 x 8 x 6 inches in size, marked "P. I. M. C. 113–173," situate on southerly boundary of said lot No. 113, from which corner number one of said lot 113, bears south 87 degrees, 30 minutes east at the distance of 145 feet and the point of intersection of the southerly boundary of said lot No. 113, to the northerly boundary of lot No. 126, the Little Ida Lode claim, bears south 87 degrees, 30 minutes east at the
30 distance of 100 feet; 919 feet to a granite stone 16 x 12 x 10 inches in size, marked "P. I. M. C. 113–126 and 173," situate

on easterly boundary of said lot No. 113 and northerly boundary of said lot No. 113 bears south 2 degrees, 30 minutes west at the distance of seventeen (17) —, eight hundred and fifty-seven feet to a granite stone 16 x 6 x 5 inches in size, marked "P. U. M. C. 126–173," situate on the easterly boundary of said lot No. 126, bears south eight degrees 30 minutes east, at the distance of 316 feet, thirteen hundred and seventeen feet (1317) to corner number two, a granite stone 18 x 10 x 8 inches in size, marked "M. C. 173;" thence south eight degrees 30 minutes east 600 feet to corner number three, a granite stone 26 x 12 x 6 inches in size, with mound of stones, marked "3 M. C. 173;" thence south eighty-five deg. 30 min. west ten hundred and eighty-five feet to a granite stone 24 x 16 x 6 inches in size, marked "P. I. M. C. 172–173," situate on north boundary of lot number 172 the Pennsylvania Lode claim, thirteen hundred and seventeen (1317) feet to corner number four a granite stone 30 x 12 x 10 inches in size with mound of stones, marked "4 M. C. 173," from which the face of a tunnel bears, with magnetic variation of nineteen degrees, 45 minutes east, south 6 degrees east at the distance of six hundred and thirty-nine (639) feet, and corner number one of said lot No. 172 bears north eighty-five degrees, 15 minutes west at the distance of four hundred and sixty-one (461) —; thence from said corner number four, north eight degrees, thirty minutes west twenty-five feet to a granite stone 18 x 8 x 6 inches in size, marked "P. I. M. C. 172–173," situate on northerly boundary of said lot No. 172, from which corner number one of said lot No. 172 bears north eighty-eight degrees, 15 minutes west at the distance of four hundred and fifty-six —, and the point
31 of intersection of northerly boundary of said lot No. 172 with southerly boundary of this claim, bears south 88 degrees, 15 minutes east at the distance of two hundred and thirty-five feet; ninety-three feet to corner number three of lot number 64 the St. Lawrence Lode claim, and also corner number two, of said lot No. 126, from which corner number three of said lot No. 126 bears north 72 degrees, 52 minutes east at the distance of eight hundred and sixty-five (865) feet, three hundred (300) feet to a point, from which discovery shaft bears north 85 degrees, 30 minutes east at the distance of two hundred and fifty (250) feet, five hundred and forty-six (546) feet to corner number two of said lot number sixty-four, and also corner number one of said lot No. 126, from which the point of intersection of the southerly boundary of said lot No. 113, with the northerly boundary of said lot No. 126, bears north 72 degrees at the distance of one hundred and seventy-four (174) feet, and the point of intersection of the northerly boundary of said lot with the northerly boundary of this claim and easterly boundary of said lot No. 113, bears north 72 — east at the distance of two hundred and twenty-two feet; six hundred feet to the place of beginning, containing eighteen (18) acres of land, more or less, and embracing thirteen hundred and seventeen (1317) linear feet of the said Johnstown lode, as represented by yellow shading in the following plat:

(Here follows map marked p. 35.)

PLAT

OF THE CLAIM O

WILLIAM HARRIS.

upon the

JOHNSTOWN.

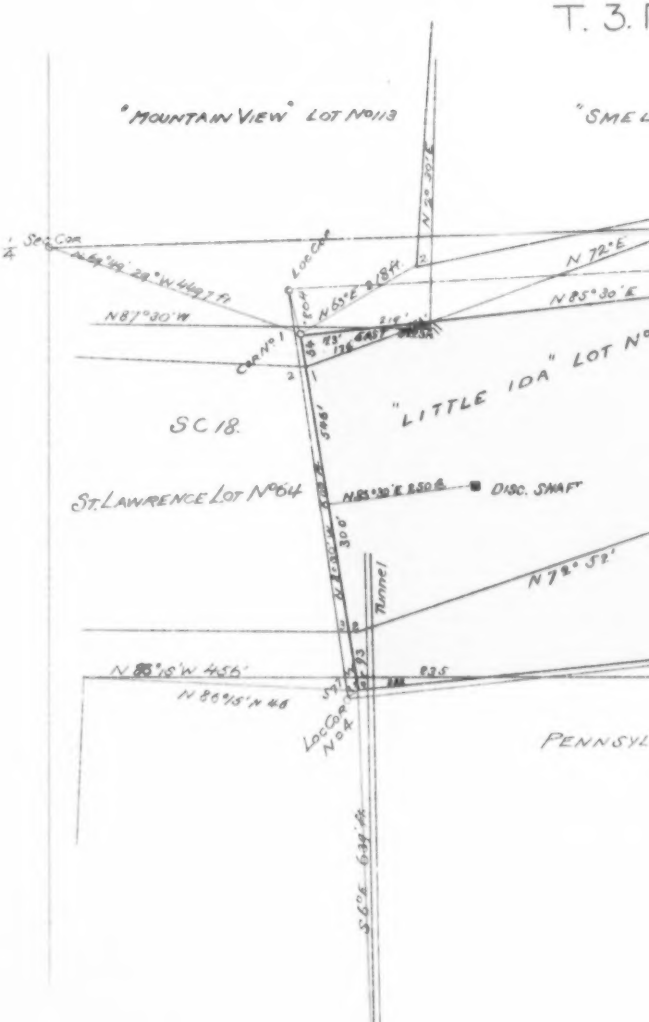
SUMMIT VALLEY MINING DIST

MONTANA

CONTAINING 18 00 ACRES.

VAR — E

T. 3.



No. 330
B the C.C. and M.C. } p. 35
& C.G. M. Co. et al.

M OF
IS. SE et al.

N. LODE

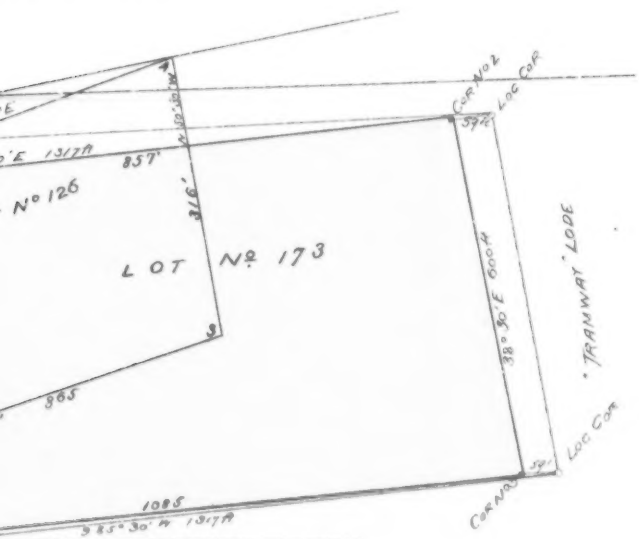
DISTRICT SILVER BOW COUNTY.
NA

SCALE 200 Ft. to an inch

-E

3. N. R. 7. W.

MELTER" LOT No 127



SYLVANIA" LOT No 172

Now know ye; that the United States of America, in consideration of the premises, and in conformity of the said Revised Statutes of the United States, have given and granted, and by these presents do give and grant unto the said William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd,
32 Jeremiah Griffith, Thomas Griffith and John H. Davis, and to their heirs and assigns the said mining premises hereinbefore described as lot No. 173, embracing a portion of section eighteen (18) in township three north of range seven west of the principal meridian, with the exclusive right of possession and enjoyment of all the lands included within the interior lines of said survey not herein expressly excepted from these presents and of thirteen hundred and seventeen (1317) linear feet of the said Johnstown vein, lode, ledge or deposit for the length hereinbefore described, throughout its entire depth, although it may enter the land adjoining, and also of all veins, lodes, ledges or deposits throughout their entire depth, the tops or apices of which lie inside the exterior lines of said survey at the surface extended downward vertically, although such veins, lodes, ledges, or deposits in their downward course may so far depart from a perpendicular as to extend outside the vertical side lines of said survey, provided that the right of possession hereby granted to such outside parts of said veins, lodes, ledges or deposits shall be confined to such portions thereof as lie between vertical planes drawn downward through the end lines of said survey at the surface, so continued in their own direction that such vertical planes will intersect such exterior parts of said veins, lodes, ledges or deposits; excepting and excluding, however, from these presents all that portion of the surface ground hereinbefore described which is embraced by said lots No. 113 and 172. And provided, further, that nothing in this conveyance shall authorize the grantees herein, their heirs or assigns, to enter upon the surface of a mining claim owned or possessed by another; to have and to hold said mining premises, together with all the rights, privileges,
33 immunities and appurtenances of whatsoever nature thereunto belonging unto the said William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Jeremiah Griffith, Thomas Griffith and John H. Davis, and to their heirs and assigns forever, subject nevertheless to the following conditions and stipulations:

First. That the grant hereby made is restricted to the land hereinbefore described as lot No. 173 with thirteen hundred and seventeen (1317) linear feet of the Johnstown vein, lode, ledge or deposit for the length aforesaid, together with all other veins, lodes, ledges, or deposits, throughout their entire depths as aforesaid, the top or apices of which lie inside the exterior lines of said survey.

Second. That the premises hereby conveyed, with the exception of the surface, may be entered by the proprietor of any other vein, lode, ledge or deposit, the top or apex of which lies outside the exterior limits of said survey, should the same in its downward course be found to penetrate, intersect, extend into or underlie the

premises hereby granted, for the purpose of extracting and removing the ore from such vein, lode, ledge or deposit.

Third. That the premises hereby conveyed shall be held subject to any vested and accrued water rights for mining, agriculture, manufacturing, or other purposes and rights to ditches and reservoirs used in connection with such water rights as may be recognized and acknowledged by the local laws, customs and decisions of courts.

Fourth. That in the absence of necessary legislation by Congress, the legislature of Montana may provide rules for working the mining claim or premises hereby granted involving easement, drainage and other necessary means to its complete development.

In testimony whereof, I, Chester A. Arthur, President of the
34 United States of America, have caused these letters to be made patent, and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington, the fifteenth day of November, in the year of our Lord one thousand eight hundred and eighty-four, and of the Independence of the United States the one hundred and ninth.

By the President,

CHESTER A. ARTHUR,
By M. McKEAN, *Secretary.*

[Seal of the General Land Office.]

S. W. CLARK,
Recorder of the General Land Office.

Recorded vol. 117, pages 329 to 333 inclusive. Examined. Filed for record March 12th, A. D. 1890, at five minutes past two o'clock p. m.

C. F. BOOTH,
County Recorder.

STATE OF MONTANA, } ss:
County of Silver Bow, }

I, John Weston, county clerk and recorder in and for said county and State, do hereby certify that the annexed instrument is a full, true and correct copy of the original instrument as recorded at page 29 in Book B of U. S. Patents, records of Silver Bow county, Montana.

Attest my hand and the seal of said Silver Bow county hereunto affixed this 26th day of March, A. D. 1897.

JOHN WESTON,
County Clerk and Recorder,
By A. E. WHIPPS, *Deputy.*

(Endorsed:) Title of court and cause. Bill of complaint. Filed April 15th, 1898. Geo. W. Sproule, clerk, by Charles W. Blair, deputy clerk.

36&37 And thereafter, to wit, on the 29th day of April, 1898, the answer of defendant, Chile Gold Mining Company, was filed, which is in the words and figures as follows, to wit:

In the Circuit Court of the United States, Ninth Circuit, District of Montana, Southern Division. In Equity.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Plaintiff,
vs.
CHILE GOLD MINING COMPANY, JOHN MACGINNISS, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants. } No. 66.

Separate Answer of Defendant Chile Gold Mining Company.

This defendant, Chile Gold Mining Company, now and at all times hereinafter saving to *themselves* all, and all manner of benefit and advantage of exceptions that can or may be had or taken to the many errors, uncertainties and imperfections in the said bill of complaint, for answer thereto, or so much thereof as this defendant is advised it is material or necessary for it to make answer to, answering says:

That it admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county, in said State.

That this defendant is now and at all times mentioned in said complaint was a corporation duly organized and existing
38 under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, Silver Bow county, State of Montana.

Admits that the defendants, Edward L. Whitmore and Carlos Warfield, are officers of this defendant, The Chile Gold Mining Company, and in charge of its operation and affairs, but denies that said Stephen S. Raymond is or was at the commencement of this suit an officer of this defendant or in charge of any of its affairs.

Admits that the complainant is the owner of the surface ground of that portion of the Pennsylvania Lode claim described in its complaint, but denies that the complainant is the owner of or entitled to the lode, or vein, or ore bodies upon which this defendant has entered and from which it has extracted the ores in question in this case, and alleges that the Montana Ore Purchasing Company, a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, in said State, is the owner of said veins or lodes and ore bodies.

Admits that complainant acquired title to the surface of the Pennsylvania Lode claim by virtue of several deeds of conveyance set out in its bill of complaint.

Denies that on or about the 1st day of April, 1895, or at any other

time, or at all, this defendant, Chile Gold Mining Company, wrongfully or unlawfully entered upon or into the premises of the complainant, to wit, the said Pennsylvania Lode claim described in said complaint, by underground workings, or tunnels, or shafts, or crosscuts, or levels, or otherwise, or at all, or extracted therefrom large or any quantities of valuable or other ores containing copper, silver, or other precious metals, against the will, wish and consent of plaintiff.

39 Denies that by means of these underground workings or otherwise, or at all, this defendant has extracted from within the limits of this plaintiff's said premises, the Pennsylvania Lode claim, ten thousand tons, or any other number of tons of ore, more or less, of the reasonable value of seventy-five thousand dollars ($75,000), or of any value whatever, or has converted the same to its own use.

Denies that this defendant ever, at any time, or at all, extracted from said Pennsylvania Lode claim any quartz, or ore, or mineral-bearing rock of any kind or description belonging to plaintiff.

Denies that ever since that time, or at all, defendant has continued to mine and extract ores from said premises belonging to the complainants, or is now extracting ores therefrom or threatens so to do, or that it ever or at all mined or extracted ores from said premises belonging to the complainant, or threatened so to do, as alleged in plaintiff's complaint, or otherwise or at all, and denies that it will do so unless restrained by injunction of this court.

Denies that by reason of said trespasses plaintiff has been damaged in the sum of seventy-five thousand dollars ($75,000), or in any sum or amount whatever, or damaged at all, or that this said defendant has not paid the same or any part thereof.

Denies that the determination of said controversy between the said plaintiff and this defendant, The Chile Gold Mining Company, involves a construction of title 23, chapter 6, of the Revised Statutes of the United States, concerning mines and mineral lands, or the construction of any other statute or law of the United States.

40 Admits that the said Pennsylvania Lode claim claimed by plaintiff is a mining claim duly located under the provisions of the statutes of the United States relative to the appropriation of mineral lands, and that the same has been patented as a mining claim under the provisions of the said statutes.

Denies that this defendant, The Chile Gold Mining Company, claims to be the lessee of or to have some interest in a portion of that certain quartz lode mining claim known as and called the Rarus Lode claim, lot No. 179, or claimed to have any interest or right to any portion of the Little Ida Lode claim, lot No. 126, which said claims lie north of and partly adjoining and near the said Pennsylvania Lode claim on the north.

This defendant admits that it claims to be the lessee and to have an interest in a portion of that certain quartz lode mining claim known as and called the Johnstown Lode claim, lot No. 173, lying north of and partly adjoining said Pennsylvania Lode claim.

This defendant admits that the said Rarus Lode claim, Johnstown

Lode claim, and the Little Ida Lode claim are mineral claims located under the laws of the United States, relative to the appropriation and location of mineral lands, and that they have been patented by the United States to various parties, and that such patents were issued under and by virtue of the statutes of the United States, relative to the patenting of mineral lands upon the public domain.

This defendant denies that it claimed the right and entered upon the premises of the plaintiff, to wit, that portion of the Pennsylvania Lode claim described in plaintiff's complaint, by reason of the fact that certain veins, leased or claimed by this defendant, or in its possession, have their tops or apices within the ground owned or
41 claimed as a part of said Rarus Lode claim, or a portion of the said Ida Lode claim.

Denies that this defendant claims any right whatever under or by virtue of any veins apexing in said Rarus or Ida Lode claims, or claim- any right, title or interest in or to any veins belonging to or the top or apex of which lie within the Rarus or Little Ida Lode claims by this defendant; admits that it claims the right to enter upon the premises claimed by plaintiff, to wit, that portion of the Pennsylvania Lode claim described in complainant's complaint, by reason of the fact that certain veins leased and claimed by this defendant and in its possession have their top or apices within the ground owned and claimed as a part and portion of said Johnstown Lode claim, although the same so far departs from a perpendicular as to depart from the ground inclosed within the exterior line of said Johnstown Lode claim, and enter the premises owned or claimed by the complainant, to wit, that portion of the Pennsylvania Lode claim described in plaintiff's complaint.

This defendant alleges that the veins or lodes upon which it has been mining within the Pennsylvania Lode claim and underneath the surface thereof, have their top or apices within the lines of the Johnstown Lode claim, as located and patented, for the entire length of said claim, and running nearly parallel with the side lines thereof, and that the same passes on their strike through the end lines of the said Johnstown Lode claim and through both end lines thereof and run the full length of said claim as located and patented, and that said lines are parallel, and this defendant further alleges that the veins or lodes upon which it has mined within the
42 Pennsylvania Lode claim have their top or apex within that portion of the Johnstown Lode claim owned by the Montana Ore Purchasing Company and leased by it to this defendant, and that the said veins can be followed, and have been followed continuously, on ore on the dip or downward course from the top or apex thereof within the boundary lines of said Johnstown Lode claim and within the boundary lines of that portion thereof leased by this defendant into the ground owned or claimed by complainant, to wit, the Pennsylvania Lode claim, and this defendant denies that the veins or ores from which it has been extracting ores within the premises of complainant, to wit, the Pennsylvania Lode claim, are broken and intersected by faults or otherwise in such a manner

that the same cannot be traced or followed from the said Johnstown into and beneath the said Pennsylvania Lode claim, and denies that by reason thereof this defendant have not right to enter upon the ground of plaintiff, to wit, the Pennsylvania Lode claim, for the purpose of extracting ores therefrom, by reason of its claim or interest in the apices of any veins within said Johnstown Lode claim.

This defendant denies that the vein or veins upon which it has been extracting ore within the premises of the plaintiff which have their apices within the Johnstown Lode mining claim, do not in their course or strike depart from the end lines of said Johnstown Lode claim, but depart from the side line of said claim in any manner whatever, or so as to prohibit this defendant from following the same beyond the lines of said Johnstown Lode claim under plaintiff's portion of the said Pennsylvania Lode claim.

43 Defendants admit that there are several veins which this defendant claims the right to follow on the dip beyond the side lines of said Johnstown Lode claim into the ground of plaintiff, the said Pennsylvania Lode claim, but denies that neither of said veins in their course or strike depart from the end lines of said Johnstown Lode claim, and denies that said claim was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States in such case, or that in consequence of such failure upon the part of the locator or locators of said Johnstown Lode claim leased by this defendant to mark the same within end lines parallel, or to locate the same along the veins, but on the contrary, having located the same across the veins, that the said Montana Ore Purchasing Company, or this defendant, as its lessee, has no extralateral rights in or to any of the veins in said Johnstown Lode claim, or are not entitled to follow the same into or upon the ground of plaintiff, to wit, the said portion of the said Pennsylvania Lode claim, and this defendant avers the fact to be that said Johnstown Lode claim was so located and patented as to have parallel end lines as provided by the statute of the United States, and that said claim was located along the vein therein and along the tops or apices of the veins upon which this defendant had been mining, in such manner as to entitle this defendant to follow said veins into the earth on their dip, although they may so far depart from said Johnstown Lode claim in their downward course as to pass beyond the side lines thereof and enter beneath the surface of said Pennsylvania Lode claim.

44 This defendant admits that a patent was issued by the United States of America to Stanislas E. Hirbour and others to that certain quartz lode mining claim known as and called the Rarus Lode claim, referred to in plaintiff's complaint, and a copy thereof is attached to and made a part of plaintiff's complaint.

Defendant further admits that a patent has been issued by the United States of America to William Harris, Sr., and others to that certain quartz lode mining claim known as and called the Johnstown Lode mining claim, and that a copy of said patent is attached to plaintiff's complaint and marked Exhibit "B."

This defendant admits that it claims to be a lessee and to have an interest in a portion of the ground patented under the said Johnstown Lode claim, but denies that it has or claims any right whatever or interest in any portion or part of the ground patented as the Rarus Lode claim, and denies that this defendant as such lessee, or otherwise, or at all, has acquired or claimed to acquire thirteen hundred linear feet of what is designated or called the Rarus Lode claim, or any other number of feet belonging to said Rarus Lode claim.

This defendant does not know and does not claim to know how much surface ground was patented to the Rarus Lode claim, and has no knowledge in regard thereto from which it can form an opinion.

This defendant further represents that as it claims no right, title or interest whatever, as lessee or otherwise, in or to any part or portion of any ground or any lode or veins which have their apices in or belonging to said Rarus Lode claim, that it is immaterial so far as this defendant is concerned, how much ground was really patented and granted in the patent of the Government of the United States to the said Rarus Lode claim.

This defendant admits that a large portion of the ground
45 which was originally included within the location of the Rarus claim have been patented under the Johnstown patent, and defendant denies that it contends or claims that only the surface ground of the Johnstown claim was patented to the patentee therein, or that all or any vein lying within the original location lines of the Rarus claim were granted by the Rarus patent, and denies that it claims or contends that it is entitled to claim the veins extending through the Johnstown claim under and by virtue of the Rarus patent, or that its extralateral rights should be determined by the Rarus patent and not by the Johnstown patent, but defendant alleges that it contends and claims that its extralateral rights to the veins in question should be determined by the ownership of the Montana Ore Purchasing Company and by this defendant's lease from said company of that parcel of ground now included within the Johnstown claim and leased by the owner thereof to this defendant, and not by the Rarus lode or patent, for the reason that said veins or lodes have their tops and apices within the ground belonging to said Johnstown Lode claim and leased to this defendant by said owner thereof.

This defendant admits that so far as it is concerned all extralateral rights to which it is entitled, and its right to follow the veins, the apex of which is in the Johnstown Lode claim, to the point where the ore sued for in this case was extracted, should be governed and regulated by the rights conveyed by the United States in the Johnstown patent, and not under or by virtue of the Rarus patent or any part thereof, or any veins belonging thereto; and defendant denies that it contends it has a right to follow said vein- or any of them in their downward course by reason of the Johnstown and Rarus patents combined, and deny that this
46 defendant has no right to follow any vein having its apex within the Johnstown Lode claim under any circumstances,

into or under said Pennsylvania Lode claim, at any point east of the intersection of the south line of the Johnstown patent to the side line of the original Rarus location.

This defendant denies that it contends or claims that the plaintiff cannot, under any circumstances, obtain any relief for ores extracted within that portion of the premises owned by it without first showing that the apices of the veins from which the ores were extracted are within the surface lines of the ground owned and claimed by plaintiff, and admits that the *prima facie* plaintiff is the owner of all ores within the boundaries of its claim extended downward vertically into the earth until it has been shown that some other person or persons has some right thereto by reason of the ownership of the apices of the veins within some other claim.

Defendant denies that it is claimed by this defendant that the apex of the veins from which the ores in question were extracted is divided in that a portion thereof is claimed by the Rarus Lode claim, and a portion thereof by the Johnstown Lode claim, and a portion thereof by the Pennsylvania Lode claim, but this defendant avers the fact to be that it only claims a right to such veins as apex within the Johnstown Lode claim and that portion thereof owned by the Montana Ore Purchasing Company, and this defendant denies that it claims by reason of a divided apex that it may claim the right to follow the said vein or any vein beneath the surface and without the side lines of the Rarus and Johnstown Lode claims under and by virtue of either or both of said claims or patents at its election or at all. Defendant denies that if any such vein
47 exists that it is claimed by this defendant that it has any extralateral rights by reason of the fact that the same has a divided apex.

This defendant denies that there is involved in this suit, or the matter in controversy between plaintiff and this defendant, numerous or any Federal questions named in said complaint or at all, and denies that there is involved the construction of the statutes of the United States relative to the locating, purchasing or patenting of mineral lands, or their construction of such statutes relative to the right of one claimant to follow veins down to and into the premises of another under the circumstances and situations of the parties in this action or the construction of said statute- in relation to the patenting of claims, or whether the vein can be patented to one person and the surface to another, or to the right of the Land Department to segregate the surface of the mineral in the ground, granting one to one person and the other to another, and as to whether said action is authorized under and by virtue of said statutes, and also as to whether when an apex of a vein is divided on the surface, part being within the premises granted in one patent and a part within another, as to what, if any, extralateral rights are granted under said circumstances.

Defendant denies that the construction of any law of the United States or any Federal question whatever is involved in this suit. This defendant avers that there is no controversy between the complainants and this defendant in this action about any of the mat-

ters or things suggested or stated by the complainant for the purpose of showing that this court has jurisdiction. This defendant,
48 therefore, asserts that this court has no jurisdiction of the subject-matter of this action, or the controversies between the complainant and defendant herein.

This defendant further alleges that on or about the 24th day of January, 1879, John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, William Harris, Sr., William Harris, Jr., and John H. Davis duly located the Johnstown Lode claim, lot No. 173, township three (3), north range seven (7) west, Silver Bow county, Montana, by compliance with all and singular the requirements of an act of Congress and the local rules, regulations and acts of the Territory of Montana; that said location was so laid along the veins or lodes in said claim, that said veins or lode in their course or strike were substantially parallel to the side lines of said claim and departed from said Johnstown Lode claim through both end lines thereof, and that said lode claim was so located that its end lines marked upon the ground were parallel to each other.

That subsequently thereto such proceedings were had in the United States Land Office, that a United States patent was issued to the owners of said Johnstown Lode claim. That the surface so patented conforms in extent and boundaries to the location thereof theretofore made as above alleged, and that the end lines, as described in said patent, were and are parallel to each other, that there was a vein or lode containing valuable metals discovered and located within the boundaries of said claim, and that the same has its apex therein, and on its course or strike departed from both end lines of the Johnstown Lode claim, as patented. That the said locators of the said Johnstown Lode claim were at the time said location was made, the owners of the said Pennsylvania Lode claim, the greater portion of which is now claimed by the complainant and described in its bill of complaint herein.
49 That on or about the 7th day of March, 1883, the owners of the Johnstown Lode claim and the Pennsylvania Lode claim were the same persons. That the then owners of the Johnstown Lode claim and the Pennsylvania Lode claim, for a valuable consideration conveyed to the predecessors in interest of the Montana Ore Purchasing Company a certain parcel of ground within the lines of the said Johnstown Claim, which portion is specifically described in the deed of conveyance therefore made, executed and delivered by said party to the predecessors in interest of this defendant, as follows: All their right, title and interest, estate, claimed and demanded of the said parties of the first part, of, in and to that certain portion claimed, and mining right, title and property of that certain ledge, vein, lode or deposit of quartz and other rock in place containing precious metals of gold, silver and other metals, and situated in Summit Valley mining district, Silver Bow county, Montana, and described as follows, to wit: Beginning at the southeast corner of lot No. 173, a granite stone 26 x 12 x 6 inches, 20 inches deep, with mound of stone 2½ feet high, 4½ feet base alongside the stone, and running thence north 8 degrees, 30 minutes west 219 feet; thence

north 70 degrees 9 minutes west 522 feet, from which corner number one of lot No. 179 bears north 70 degrees 9 minutes west 552 feet distant; thence south 74 degrees 33 minutes west 329 feet; thence south 25 degrees 40 minutes west 235 feet; thence south 69 degrees 25 minutes east 400 feet; thence north 85 degrees 30 minutes east 567 feet to the place of beginning, containing an area of six and eighty-six-hundredths (6.86) acres, all right, title and interest that is now possessed, together with any that may hereafter accrue
50 through application No. 1265, made to the United States Government by the grantors herein for patent No. 173, together with all the dips, spurs and angles, and also all metals, ores, gold, silver and metal-bearing quartz, rock and earth therein, and all the rights, privileges and franchises thereto appertaining, or usually had and enjoyed, and also all the estate, right, title and interest above claimed and demanded whatsoever of said parties of the first part, of, in and to the premises and every part and parcel thereof.

That the predecessors in interest of this defendant immediately after the purchase, entered into the possession of the premises so conveyed as aforesaid, and that thereafter said Montana Ore Purchasing Company became the owners thereof, and at all times herein and at all times named in said bill of complaint, has been and now is the owner, in possession and entitled to the possession thereof.

And this defendant further alleges that at the time said deed, dated the 7th day of March, 1883, was executed and delivered, the grantors therein were the owners of the Pennsylvania Lode claim and also the owners of the Johnstown Lode claim, and that by said deed the grantors therein, and the predecessors in interest of complainant in this case, conveyed to the predecessors in interest of this defendant all leads, lodes and ledges, within their dips, spurs and angles, beneath the surface of the Pennsylvania Lode claim which might have their tops or apices within that parcel of ground conveyed by said deed, and that the conveyance of said veins lodes and ledges beneath the surface of the Pennsylvania Lode claim was made by the predecessors in interest of the complainant wholly without regard to the strike of said veins, lodes or ledges, and wholly without regard to
51 whether or not they departed or might depart through any particular line or lines of the Johnstown lode; that by said conveyance the predecessors in interest of the complainant, then and there conveyed to the predecessors in interest of this defendant the said leads, veins and ledges which are now claimed by the complainant in this case, and that ever since said time down to the commencement of this action, this defendant and its predecessors in interest have been, and this defendant now is in possession and entitled to the possession of whatever leads, lodes and ledges, or veins may occur beneath the surface of the Pennsylvania Lode claim which have their tops or apices within the premises conveyed by said deed and described in the lease made by said Montana Ore Purchasing Company to this defendant, a copy of which is hereto attached, and which premises lie inside the Johnstown Lode claim regardless of the fact that they may or may not depart through any par-

ticular line of said Johnstown claim, or as to whether or not they depart through the end lines or side lines thereof. That subsequent and after the date of said deed to the predecessors in interest of this defendant and after the said deed had been recorded in the office of the county clerk and recorder of Deer Lodge county, Montana, the county in which said premises were then situated, the grantors named in said deed conveyed to the predecessors in interest of complainant all the remainder of their right, title and interest at the time of the conveyance in and to that portion of the Pennsylvania Lode claim by complainant, and this defendant alleges that by virtue of such conveyance to the predecessors in interest of the complainant in this action, this complainant and its predecessor-in interest, acquired no right title or interest whatever, in or to any of the leads, lodes, veins, ledges or mineral deposits which
52 lie beneath the surface of the Pennsylvania Lode claim which have their tops or apices within that parcel of ground conveyed to the predecessors in interest of this defendant by said deed of March 7th, 1883, and which lies within the Johnstown Lode claim, for the reason that at the time the said conveyance was made to the predecessors in interest of said complainant, the grantors in said conveyance were not owners in the possession or entitled to the possession of any of the leads, lodes, veins, ledges or mineral deposits, with their dips, spurs or angles, beneath the surface of the Pennsylvania Lode claim, which had their tops or apices within the premises conveyed to the predecessors in interest of this defendant as aforesaid, and for the reason that the predecessors in interest of defendant were at the time the owners, in possession and entitled to the possession of the same under said deed of conveyance, and that they and this defendant have been ever since said time, so the owner-, in possession and entitled to the possession of the same.

This defendant further alleges that under and by virtue of said deed of conveyance for said portion of the Johnstown Lode claim, hereinbefore mentioned, that the said Montana Ore Purchasing Company is the owner and entitled to all the veins, lodes, ledges and deposits within or having their tops or apices within the said portion of the Johnstown Lode claim throughout the entire length together with all the dips, spurs and angles, and also all the metals, ores, gold and silver bearing quartz rock and earth therein, although the same may depart on their downward course from within the lines of that portion of the Johnstown Lode claim, and enter beneath the surface of the Pennsylvania Lode claim, and that said com-
53 plainant, by reason of the fact that said Johnstown Lode claim was located by the persons before named, and that said persons were the owners thereof, and of the Pennsylvania lode at the time the said above-mentioned deed was executed and delivered to the predecessors in interest of this defendant, and by reason of the execution and delivery of said deed are estopped from denying its right thereunto or to any of the veins, lodes or ledges dipping under the surface of the Pennsylvania Lode claim but apexing in said premises described in said deed. This defendant hereby ex-

pressly disclaims any and all right to mine and extract the ore fo
which this suit was brought under and by virtue of any right, title
or interest whatever, of the Rarus or Little Ida Lode claims, and
hereby disclaims all right, title and interest in or to any part or por
tion of said Rarus or Little Ida Lode claim, not only in this suit bu
in any or all suits which may be instituted in this or any othe
State or Federal court, and relies entirely upon whatever right
this defendant has by reason of the lease hereinafter named
made to this defendant by the Montana Ore Purchasing Company
the owners of that portion of the Johnstown Lode claim therein
mentioned.

This defendant avers the fact to be that on the 26th day of March
1898, the said Montana Ore Purchasing Company then and now
being the owners of the said portion of the Johnstown Lode claim
named in said lease, made, executed and delivered to this defendant
a certain contract and lease in writing and an amendment thereto
to that certain portion of the Johnstown Lode mining claim de
scribed in said lease, a copy of which lease and amendment are
hereto attached, marked respectively Exhibits "A" and "B"
54 and made a part hereof, and that this defendant thereafter
under and by virtue of the provisions and terms of said lease
entered into and upon that portion of the said Johnstown Lode
mining claim described in said lease, and proceeded to mine and
extract the ore therefrom, and so mining entered upon and beneath
the surface of said Pennsylvania Lode claim and extracted the ore
for which this suit is brought, and continued to so mine and extract
such ore until enjoined by this court.

That said ore, so extracted was taken from veins having their tops
or apices within said Johnstown Lode claim and within that portion
thereof leased to this defendant, and said veins can and have been
followed unbroken and upon ore all the way from said apices within
the surface lines of said Johnstown Lode claim down to the point
where this defendant extracted said ore.

That said ore so extracted by this defendant amounted to eighty
two hundred and thirty-four tons and no more, and was of the value
of thirty thousand, two hundred and eighty-seven and seventy-two
hundredths dollars, and no more; and defendant further alleges
that by reason of said lease from said Montana Ore Purchasing Com
pany, a copy of which lease is hereunto attached, marked "Exhibit
A" and made a part of this answer, that this defendant had the legal
right to mine and extract said ore.

This defendant further represents that if, by the injunction o
this court, that it shall be restrained and enjoined from continuing
and mining and extracting said ore, that it will be greatly and irre
mediably damaged for the reason that when the time mentioned in
said lease expires, that this defendant will have no right
55 whatever to enter into or upon said premises and extract any
ore whatever. That said premises, at the expiration of this
lease, will revert to said Montana Ore Purchasing Company, and
this defendant will have no*t* further right or interest therein. That
there is great profit in mining and extracting said ore under and

by virtue of said lease, and this defendant, if allowed to continue to mine and extract said ore, will make and realize from such work and mining the sum of $16.427 and $\frac{26}{100}$ dollars per week net profit, but if this defendant shall be enjoined from continuing to work said premises under and by virtue of said lease until the same expires, that they will be deprived of said profit which they otherwise would and can make under said lease, and will be damaged in the sum of one million two hundred and fifty dollars.

Wherefore, having fully answered to complainant's complaint herein and admitted or denied the averments thereof, this defendant prays to be hence dismissed with its reasonable cost and expense in this behalf most wrongfully sustained.

CHILE GOLD MINING COMPANY,
By CARLOS WARFIELD, *Its President.*
STAPLETON & STAPLETON,
Of Butte, Montana, Solicitors and Counsel of Defendant Chile Gold Mining Company.

STATE OF MONTANA, }
County of Silver Bow, } *ss:*

Carlos Warfield, being duly sworn on oath deposes and says: That he is an officer of the above-named defendant, a corporation,
56 The Chile Gold Mining Company, to wit: its president. That he has heard read the foregoing answer and knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

CARLOS WARFIELD.

Subscribed and sworn to before me this 28th day of April, A. D. 1898.

[SEAL.] G. W. STAPLETON,
Notary Public in and for Silver Bow County, State of Montana.

Service of the foregoing is admitted this 29th day of April, 1898.
FORBIS & EVANS,
Solicitors and Counsel for Complainants Boston & Montana Consolidated Copper and Silver Mining Company.

DEFENDANTS' EXHIBIT "B."

Memorandum of agreement made to correct agreement of lease made on the 26th day of March, A. D. 1898, between the Montana Ore Purchasing Company, a corporation, and the Chile Gold Mining Company, a corporation.

This memorandum witnesseth: That whereas prior to the 26th day of March, an agreement of lease was entered into between the Montana Ore Purchasing Company as party of the first part, and the Chile Gold Mining Company as party of the second part, whereby the said party of the first part leased to the said party of

the second part from that date until the 15th day of September, 1899, all its right to extract ores underneath the surface of
57 the Pennsylvania Lode claim, lot No. 172, which belongs to the first party under that certain deed made on the 7th day of March, in the year one thousand eight hundred and eighty-three, by John Dunstan, *et al.*, to Joseph Ortyer, *et al.*, for that certain piece of mining ground now lying within the Johnstown Lode claim in Summit Valley mining district, Silver Bow county, Montana, and described as follows, to wit:

"Beginning at the southeast corner of lot No. 173, and running thence north 8 degrees 30′ west 219 feet; thence north 70 degrees 9′ minutes west 522 feet from which corner number 1 of lot No. 179 bears north 70 degrees 9′ west 550 feet distant; thence south 74 degrees 33′ west, 329 feet; thence south 25 degrees 40′ west 235 feet; thence south 69 degrees 25′ east, 400 feet; thence north 85 degrees 30′ east, 567 feet to the place of beginning, containing an area of 6 and $\frac{86}{100}$ acres.

Together with all the veins, lodes and ledges therein contain-, with their dips, spurs and angles, and all rights privileges and franchises thereunto incident, appendant and appurtenant, or therewith usually had and enjoyed."

And whereas, on the 26th day of March, 1898, said parties entered into a written lease with reference thereto, which lease contains inaccuracies and mistakes, both with reference to the premises leased and the terms and conditions of said lease, and fails to fully express the understanding and agreement of said parties with reference thereto.

Now, therefore, the said parties in order to correct said lease as reduced to writing, and to make the same fully conform to the understanding and agreement of the parties, and to clearly express their intention and agreement, do hereby correct the same to read as follows:

58 That the said party of the first part, Montana Ore Purchasing Company, a corporation, does hereby lease unto the said second parties on the 26th day of March, 1898, until the 15th day of September in 1899, all the estate, right, title and interest which the said first party has by that reason of its ownership of that portion of the Johnstown Lode claim conveyed to its predecessors in interest on the 7th day of March, 1883, by deed from John Dunstan, *et al.*, to Joseph Ortyer, *et al.*, which is described as follows:

"Beginning at the southeast corner of lot No. 173, and running thence north 8 degrees 30 minutes west 219 feet; thence north 70 degrees 9 minutes west, 522 feet, from which corner number one of lot No. 179 bears north 70 degrees 9 minutes west, 550 feet distant; thence south 74 degrees 33 minutes west, 329 feet; thence south 25 degrees 40 minutes west, 235 feet; thence south 69 degrees 25′ east, 400 feet; thence north 85 degrees 30′ east 567 feet to the place of beginning, containing an area of 6 and $\frac{86}{100}$ acres.

Together with the veins and lodes therein contained, with their dips, spurs and angles, and the rights, privileges and franchises

thereunto incident, appendant, and appurtenant, or therewith usually had and enjoyed."

To extract all of the ores underneath the surface of the Pennsylvania Lode claim, lot No. 172, which belongs to the first party under and by virtue of said deed of conveyance, and its ownership of said portion of the Johnstown Lode claim.

It being intended hereby, to lease to the second party only the right of the first party by virtue of said deed and its ownership of said portion of the Johnstown Lode claim to mine and extract
59 ores and minerals thereto belonging underneath the surface of the Pennsylvania Lode claim. And said second party shall not have the right to mine or extract any of the ores from beneath the surface of the said Pennsylvania Lode claim by reason of any other claim of right or title of the first party, said agreement, lease and these presents being expressly confined to the rights of the first party in the ores underlying the surface of the Pennsylvania Lode claim to the title or right of the first party thereto by reason of its ownership of said portion of the Johnstown Lode claim and said deed before mentioned.

And said first party does further agree that it will hoist all of the ore delivered by the said second party to the first party at the various levels of either Rarus shaft No. 1 or Rarus shaft No. 2, for 10 cts. per ton and that it will pay to the said second party for all ores so delivered at the said shafts, after deducting the cost of hoisting and cost of hauling from the ore-bins on the surface at the said shafts to the works of the first party, nine (9) cents per pound copper contained in all ores running over eight (8) per cent., wet assay, less six dollars ($6.00) treatment, and seven and one-half (7½) cents per pound copper contained in all ores assaying over three (3) per cent. wet assay, and less than eight (8) per cent., after deducting two dollars ($2.00) treatment charge thereon. Nothing to be paid for silver.

And the said second party in consideration for the granting of said lease agrees to at once enter upon the work of mining and extracting the ores by said agreement and lease and hereby leased, and to mine and extract said ores continuously at all times during the period of said lease; and upon its failure for any cause
60 to do so, said lease and agreement may at the option of the said first party be terminated and forfeited.

And the said second party agrees that it will pay to the said first party twenty (20) per cent. of the net proceeds from the operations in the said mine, and that it will under the direction of the agents of the first party maintain all of the workings in and under the said Pennsylvania claim in first-class operating condition, and that it will do such development as to the agents of the first party shall seem proper, and as they may request it to do, paying for the same out of the proceeds of the ore thus extracted and will carry on the work of extracting ore continuously at all times during the period of said lease.

It being expressly understood and agreed, by and between the parties that these presents are made for the purpose of correcting

the written instrument of lease entered into between the parties on the said 26th day of March, 1898, and supplying omissions therein, which occurred through the oversight of the parties, and making the same truly express the intention and agreement of the parties thereto.

These presents shall take effect from the said 26th day of March, 1898, and be considered and construed in connection with said instrument and as a part and correction thereof.

In witness whereof, the parties hereto have caused their respective presidents and secretaries, who are thereto duly author-
61 ized, to execute these presents on this 26th day of April, A. D. 1898.

MONTANA ORE PURCHASING COMPANY,
By F. AUGUSTUS HEINZE, *Pres.* [SEAL.]
[CORPORATE SEAL.] MONTANA ORE PURCHASING CO.
ARTHUR P. HEINZE, *Sec'y.* [SEAL.]
CHILE GOLD MINING COMPANY.
CARLOS WARFIELD, *Pres.* [SEAL.]
E. L. WHITMORE, *Sec'y.* [SEAL.]

COUNTY OF SILVER BOW, } ss:
State of Montana, }

On this 26th day of April, A. D. 1898, before me, John McHatton, a notary public in and for Silver Bow county, Montana, personally appeared F. Augustus Heinze, known to me to be the president and at the same — Arthur P. Heinze known to me to be the secretary of the corporation that executed the within instrument (Montana Ore Purchasing Company), and acknowledged to me that such corporation executed the same.

In witness whereof, I have hereunto set my hand and affixed my notarial seal, this 26th day of April, A. D. 1898.

[Notarial Seal.]

(Signed) JOHN McHATTON,
Notary Public in and for Silver Bow County, Montana.

DEFENDANTS' EXHIBIT "A."

Memorandum of an agreement made and entered into this 26th day of March, A. D. 1898, by and between the Montana Ore Purchasing Company, a corporation duly incorporated under and
62 by virtue of the laws of the State of Montana, party of the first part, and the Chile Gold Mining Company, a corporation duly incorporated under and by virtue of the laws of the State of Montana, party of the second part.

Whereas, the above-named party of the first part, by virtue of the conveyance or an agreement to convey, made on the part of the original locators of the Johnstown Lode claim to the locators of the Rarus Lode claim, the predecessors in interest of the said party of the first part, are the owners of a certain part of the said Johnstown Lode claim, lot No. 173, more particularly described as follows:

Beginning at the southeast corner of the said lot and running thence north 8 degrees 30′ west 219 feet; thence north 70 degrees 9′ west 550 feet, from which corner number one of lot No. 179 bears north 70 degrees 9′ west 235 feet; thence south 69 degrees 25′ east 400 feet; thence north 85 degrees 30′ east 567 feet to the place of beginning, containing an area of 6 and $\frac{86}{100}$ acres and all the veins, lodes or deposits which may have their apex or apices within the surface boundaries heretofore more particularly described, although said veins, lodes or ledges so far depart from a perpendicular in their course downward as to extend outside the vertical side lines of the said Johnstown Lode claim; and

Whereas, the said party of the second part is desirous of leasing from the party of the first part, providing it can obtain proper accommodations for the breaking and hoisting of the ore and proper rates of treatment on same, all of the rights of the party of the first part in and to the ores under the surface of the Pennsylvania Lode claim, lot No. 172;

63 Now, therefore, witnesseth, that the said party of the first party does hereby lease unto the said party of the second part from date until the 15th day of September, 1899, the right to extract all of the ores under the surface of the Pennsylvania Lode claim, lot No. 172, which belong to the party of the first part; and does further agree that it will hoist all of the ore delivered by the party of the second part to the party of the first part at the various stations of the Rarus shaft No. 1, or Rarus shaft No. 2, for ten (10) cents a ton, and that it will further agree to pay to the party of the second part for all ores so delivered at the said shafts, after deducting the cost of hoisting and the cost of hauling from the ore bins on the surface at the said shafts to the works of the party of the first part, nine (9) cents per pound copper contained in all ores running over eight (8) per cent. wet assay, less six dollars ($6.00) treatment and seven and one-half (7½) cents per pound copper contained in all ores assaying over three (3) per cent. wet assay, and less than eight (8) per cent.; nothing to be paid for silver.

And the party of the second part hereby agrees that it will pay to the party of the first part twenty (20) per cent. of the net proceeds from the operations in the said mine, and that it will, under the direction of the agents of the party of the first part, maintain all of the workings in and under the said Pennsylvania Lode claim in first-class operating condition, and that it will do such development as to the agents of the party of the first part shall seem proper and as they may request it to do, paying for the same out of the proceeds of the ore thus extracted.

In witness whereof, the parties hereto have caused their re-
64 spective presidents and secretaries to execute this agreement on the day and year first above written.

MONTANA ORE PURCHASING COMPANY,
By F. AUGUSTUS HEINZE, *President.* [SEAL.]
ARTHUR P. HEINZE, *Secretary.* [SEAL.]

(Endorsed:) Title of court and cause. Separate answer of Chile Gold Mining Company. Filed April 29, 1898. Geo. W. Sproule, clerk.

65 And thereafter to wit on the 21st day of March 1899 the mandate of the circuit court of appeal- was filed herein which is in the words and figures as follows, to wit:

UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable the judges of the circuit court of the United States for the district of Montana, southern division, Greeting:

[SEAL.] Whereas lately in the circuit — of the United States for the district of Montana, southern division, before you or some of you, in a cause between Boston and Montana Consolidated Copper and Silver Mining Company, complainant, and Chile Gold Mining Company, (a corporation), John MacGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, defendants, an order and temporary or interlocutory injunction was entered and granted the defendants above named on the 9th day of May, 1898, which said order and temporary or interlocutory injunction are of record in the office of the clerk of said circuit court in said cause in said circuit court, to which record reference is hereby made and the same are hereby expressly made a part hereof; and as by the inspection of the transcript of the record of the said circuit court which was brought into the United States circuit court of appeals for the ninth circuit, by virtue of an appeal agreeably to the act of Congress in such cases made and provided, fully and at large appears

And whereas, in the present term of October in the year of our Lord one thousand eight hundred and ninety-eight the said cause came on to be heard before the said circuit court of appeals on the said transcript of record, and was argued by counsel:

On consideration whereof, it is now here ordered, adjudged and decreed by this court that the decree of the said circuit court in this cause be, and the same is hereby reversed with costs, and the cause is remanded to said circuit court with instructions to dismiss the bill, for want of jurisdiction.

FEB. 13, 1899.

66 You therefore are hereby commanded that such dismissal and further proceedings be had in said cause, in accordance with the opinion and decree of this court and as according to right and justice, and the laws of the United States, ought to be had, the said decree of said circuit court notwithstanding.

Witness, the Honorable Melville W. Fuller, Chief Justice of the United States, the 6th day of March in the year of our Lord one thousand eight hundred and ninety-nine.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

Costs of Appellants.

Printing record	$235.60
Clerk C. C. trans.	75.00
Clerk C. C. A.	25.45
Attorney	20.00
Taxed at	$356.05

F. D. MONCKTON, *Clerk.*

Clerk, by Chas. W. Blair, dep. clerk.

Mandate—Filed and entered March 21, 1899. Geo. W. Sproule clerk by Chas. W. Blair, dep. clerk.

And thereafter to wit, on the 29th day of March 1899 a decree was duly made and entered herein which is in the words and figures as follows, to wit:

67 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER and Silver Mining Company, a Corporation, Complainant,
vs.
CHILE GOLD MINING COMPANY (a Corporation); John MacGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants.
} Decree. No. 66.

This cause coming on to be heard before the court on the — day of March, 1899, upon the mandate of the United States circuit court of appeals, ninth circuit, filed herein and spread upon the minutes of this court,

It is now hereby on motion of Stapleton and Stapleton solicitors and of counsel for defendants, ordered, adjudged and decreed and in accordance with the direction of the said mandate that the bill herein be dismissed, at the cost of the complainant, and that the defendants have and recover from the complainant their costs on appeal, taxed in said mandate at the sum of three hundred and fifty-six and $\frac{05}{100}$ ($356.05) dollars.

By the court, this 29th day of March, 1899.

HIRAM KNOWLES, *Judge.*

Decree. Filed and entered March 29, 1899, Geo. W. Sproule, clerk by Chas. W. Blair, dep. clerk.

And thereafter to wit on 30th day of March 1899 a bill of exceptions was duly settled allowed and filed herein which is in the words and figures as follows, to wit:

68 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, a Corporation, Complainant,
vs.
CHILE GOLD MINING COMPANY, a Corporation; JOHN MACGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants. } No. 66.

This cause came on for hearing upon the application of the defendants, Chile Gold Mining Company, John MacGinniss, Edward L. Whitmore, Carlos Warfield and Stephen S. Raymond, to dismiss this action upon the ground that there was no Federal question presented by the allegations in complainant's amended bill of complaint, herein, and the defendants' answer thereto, and the said application having been submitted to and duly considered by the court, the court rendered its decision herein sustaining said application to dismiss, upon the ground and for the reason that the court has no jurisdiction of said action.

To the ruling of the court in sustaining said application to dismiss and entering a decree of dismissal therein, the complainant in said action duly excepted and asks the court to sign and seal this its bill of exceptions, which was done accordingly in open court this 29th day of March 1899.

HIRAM KNOWLES, *Judge.*

Bill of exceptions. Filed March 30, 1899, Geo. W. Sproule, clerk, by Chas. W. Blair, dep. clerk.

69 And thereafter to wit, on the 30th day of March 1899, a certificate of question of jurisdiction on appeal was duly made, filed and entered herein which is in the words and figures as follows, to wit:

70 In the Circuit Court of the United States, Ninth Circuit, District of Montana, Southern Division.

BOSTON AND MONTANA CONSOLIDATED COPPER and Silver Mining Company, a Corporation, Complainant,
vs.
CHILE GOLD MINING COMPANY, a Corporation; John MacGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants. } In Equity. No. 66.

Certificate of question of jurisdiction on appeal from the circuit court of the United States, ninth circuit, district of Montana, southern division, to the Supreme Court of the United States.

This cause coming on for hearing upon the application of the defendants, Chile Gold Mining Company, John MacGinniss, Edward

L. Whitmore, Carlos Warfield, and Stephen S. Raymond, to dismiss said action on the ground of want of jurisdiction in this court to consider the same and said application having been submitted to this court and fully considered, said application to dismiss was sustained and a decree dismissing the same duly entered by this court for the reason and upon the ground that the court has no jurisdiction of said action upon the facts alleged in complainant's bill of complaint and the answer of the Chile Gold Mining Company thereto, and said complainant being desirous of taking an appeal from the decree of the court sustaining said application to dismiss, and entering said decree of dismissal, and having this day applied to this court for a certificate as required by law in such cases:

The court hereby certifies to the Supreme Court of the United States for a decision upon the following question of jurisdiction, which has arisen upon said application to dismiss, whether or not said court had jurisdiction and whether or not a Federal
71 question is presented in complainant's bill of complaint and the answer of the Chile Gold Mining Company thereto.

The said allegations in said complainant's bill of complaint are as follows, to wit:

"That your orator is now and at all the times hereinafter mentioned was a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county, State of Montana.

That the defendant, Chile Gold Mining Company is now and at all the times hereinafter mentioned was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county, State of Montana.

That your orator is the owner and entitled to the possession of that portion of the following-described property known as and called the Pennsylvania Lode mining claim, lot number one hundred and seventy-two, situated in Summit Valley mining district Silver Bow county, Montana, which is particularly bounded and described as follows to wit:

Beginning at corner number one from which the quarter-section corner on the north boundary of section eighteen in township three north range seven west of the principal meridian for Montana bears north three degrees fifty-seven minutes west seven hundred and thirteen feet distant and corner number three of lot number sixty-four, the St. Lawrence claim, and corner number two of lot number one hundred twenty-six, the Little Ida claim bears north eighty-three degrees ten minutes east four hundred forty-nine feet distant. Thence first course, magnetic variation nineteen degrees forty-five minutes east south eighty-eight degrees fifteen minutes east fifty-six feet, to a point on the east end line of lot one hundred forty-seven, the Rob Ray Lode claim for point of intersec-
72 tion of said lots 147 and 172, from which corner number five of said lot 147 bears south eleven degrees east two hundred and ninety-six feet distant; one thousand five hundred feet to corner number two. Thence second course, magnetic variation twenty de-

grees east, south 4 degrees 30 minutes west 564.6 feet to a point on the north boundary line of mineral application 722, a placer claim from the northwest corner of said mineral application 722, which is also the northeast corner of mineral application 686, a placer claim, bears west 183.9 feet distant, six hundred feet to corner number three. Thence third course, magnetic variation 20 degrees east, north 88 degrees 15 minutes west 181.3 ft. to a point on the west boundary line of said mineral application 722, and east boundary line of said mineral application 686, from which the northwest corner of said mineral application 722 and the northeast corner of said mineral application 686 bears north 29.8 feet distant, nine hundred and twenty-four feet, to a point over a tunnel, from which the mouth of said tunnel bears south 58 feet distant, eleven hundred and fifty-six and two-tenths feet to a point on the north boundary line of said mineral application 686, from which the northeast corner of said mineral application 686 bears east 974.4 feet distant, fifteen hundred feet to corner number four, from which the southwest location corner bears south four degrees 30 minutes west 48 feet distant; discovery shaft bears north 70 degrees 30 minutes east 827 feet distant; corner number five of lot 147 bears north 27 degrees 30 minutes east 344 feet distant and corner number three of lot 148, the Grant Extension lode bears south 36 degrees 45 minutes west 152 feet distant. Thence fourth course, magnetic variation, 20 degrees east north four degrees east 325 feet to a point on south side line of said lot 147 for point of intersection of said lots 147 and 172, from which corner number five of said lot 147 bears south 82 degrees 4 minutes east 135 feet distant; six hundred feet to corner number one, the place of beginning. Expressly excepting and ex-
73 cluding herefrom all that portion of the ground heretofore described embraced in said mining claim or lot number 147; also mineral application- 686 and 722; and also that portion of the said Pennsylvania vein or lode and also all veins, lodes or ledges throughout their entire depth, the tops or apices of which lie inside of such excluded ground. Also excepting and excluding therefrom all that portion of the said above-described Pennsylvania Lode claim, described as follows, to wit: Beginning at the northeast corner of lot number 172, and running thence north 88 degrees 15 minutes, west 130 feet; thence south 69 degrees 25 minutes east 136 feet; thence north 4 degrees 30 minutes east 44 feet to the place of beginning, and containing an area of $\frac{7}{100}$ of an acre of ground.

That this complainant became and was and is the owner of the said premises in the following manner to wit:

That on the 18th day of June 1877 William Harris Sr. and William Harris Jr. duly located the said Pennsylvania Lode claim as a quartz lode mining claim.

That on the 13th day of January, 1879, the said William Harris Sr. and William Harris Jr. duly conveyed to John E. Lloyd, David E. Lloyd, and Thomas E. Lloyd, by regular deed of conveyance a one-half undivided interest in and to the said Pennsylvania Lode claim.

That on January 13th, 1879, he, said William Harris Sr. and

William Harris Jr. duly conveyed to John H. Davis, by regular deed of conveyance an undivided one-sixth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to William Harris Sr. by regular deed of conveyance a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

That on the 19th day of May, 1879, the said John H. Davis duly conveyed to John Dunstan by regular deed of conveyance a one-twelfth undivided interest in and to the said Pennsylvania Lode claim.

74 That on March 13th, 1880, David J. Lloyd conveyed to William W. Thomas, by regular deed of conveyance an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 14th day of August, 1880, William Harris, Sr., and William Harris, Jr., conveyed to Thomas Griffith, by regular deed of conveyance, an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on July 16th, 1882, Thomas C. Porter and Howell M. Thomas, the duly appointed, qualified and acting administrators of the estate of William H. Thomas, deceased, duly authorized and empowered, conveyed by regular deed of conveyance to John E. Lloyd an undivided one-twelfth — in and to the said Pennsylvania Lode claim.

That on the 19th day of July, 1882, the said John E. Lloyd, by regular deed of conveyance, conveyed to Jeremiah Griffith an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 15th day of August, 1883, the said William E. Harris, Jr., and Anna Harris, his wife, by regular deed conveyance, conveyed to Thomas Griffith an undivided one-eighth interest in and to the said Pennsylvania Lode claim.

That on the 19th day of April, 1886, a United States patent for the said Pennsylvania Lode claim, was duly issued by the United States to William Harris, Sr., William Harris, Jr., John E. Lloyd, David J. Lloyd, Thomas E. Lloyd, Jeremiah Griffith, and John Dunstan.

That on the 26th day of March, 1888, the said Jeremiah Griffith, by regular deed of conveyance, conveyed to Enoch Grim an undivided one-twelfth interest in and to the said Pennsylvania Lode claim.

That on the 31st day of March, 1888, the said John E. Lloyd, Margaret Lloyd, his wife, Jeremiah Griffith, Enoch Grim, John H. Davis and Laura Davis, his wife, William Harris, Jr., and

75 Anna Harris, his wife, Thomas Griffith and David J. Lloyd, by John E. Lloyd, his attorney-in-fact, by regular deed of conveyance, conveyed to Thomas Couch, all that portion of the said Pennsylvania Lode claim hereinbefore described as the property of the complainant, excepting a right of way to the Montana railway.

That on the 30th day of November, 1888, by regular deed of con-

veyance, the said Thomas Couch and Rachel Couch, his wife, conveyed to this complainant, The Boston and Montana Consolidated Copper and Silver Mining Company, all that portion of the said Pennsylvania Lode claim, hereinbefore described as the property of this complainant, and that thereby and by virtue of the said conveyances the complainant became and was and is the owner of the said premises hereinbefore described.

That on or about the 28th day of March, 1898, the said defendants wrongfully and unlawfully entered into the said premises hereinbefore described, by underground workings and by tunnels, shafts, cross-cuts, and levels, and extracted from the said premises large quantities of valuable ores, to wit, ten thousand (10,000) tons, more or less, and of the reasonable value of seventy-five thousand (75,000) dollars.

And that ever since the said date the said defendants have continued to extract and mine ores from the said premises belonging to this complainant, and are now mining and extracting ores therefrom and threaten to continue to do so unless this court shall, by its injunction, restrain and enjoin the said defendants from so doing.

That the said ground of this complainant is valuable almost exclusively for the minerals therein contained, and that the same is very valuable for the copper, and silver and gold ores which are found therein in large quantities, and that it is these ores that the defendants have extracted and which they are now extracting and mining and threaten to continue to extract in the future.

That the said ground owned by the complainant herein
76 before described is of the reasonable value of more than one hundred thousand dollars, and that the said ores which the defendants are extracting and threaten to extract are of the value in excess of fifty thousand dollars.

The complainant further alleges that it has no means of ascertaining the quantity or value of the ores which the said defendants are extracting or may extract from the said premises owned by the complainant, and that if the said defendants are permitted and allowed to continue to extract the said ores from the said premises that it would be altogether uncertain and indefinite as to what amount of ores ore the value thereof, which may be extracted in the future as in the past, and that the complainant will be compelled to rely to a great extent upon the good faith and showing of the defendants as to the amount or value of the ores which they have heretofore and may hereafter extract from the said premises.

That unless the defendants are enjoined and restrained from mining and extracting the ores from the said premises of this complainant, the said portion of the said Pennsylvania Lode claim, this complainant will be required to bring numerous actions for the determination of the damages which it has sustained and will sustain by reason of such trespasses, and that the said trespasses on the part of the said defendants are continuing from time to time and that this complainant brings this action in order to avoid a multiplicity of actions in the premises.

That by reason of the said trespasses on the part of the said de-

fendants on the premises of this complainant, this complainant has suffered and will continue to suffer great and irreparable injury and damage.

That on or about the 15th day of April, 1898, this complainant brought an action in the circuit court of the United States, ninth circuit, for the district of Montana, southern division, against the said defendants to recover of the said defendants for the ores extracted from the said portion of the Pennsylvania claim, hereinbefore described, and that the said action is now pending in this court.

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And, as showing the jurisdiction of this court to determine the said matters set forth in the said action this complainant alleges:

That the determination of the said controversy between the said complainant and the said defendants involves the construction of title twenty-three, chapter VI of the Revised Statutes of the United States, concerning mines and mineral lands, in this, to wit:

That the said Pennsylvania Lode claim, owned and claimed by the complainant, as hereinbefore alleged, is a mining claim duly located under the provisions of the statutes of the United States, relative to the appropriation of mineral lands and that the same has been patented as a mining claim under the provisions of the said statutes.

That the said defendants are or claim to be the lessees of or to have some interest in a portion of that certain quartz lode mining claim known as and called the Johnstown Lode claim, lot number 173, and also a portion of the Little Ida Lode claim, lot number 126, which said claims lie north of and partially adjoining and near to the said Pennsylvania Lode claim on the north; that plaintiff is not acquainted with the exact metes and bounds of said ground claimed by the defendants.

That the said Rarus Lode claims, Johnstown Lode claim, and the Little Ida Lode claim are mineral claims located under the laws of the United States, relative to the appropriation and location of mineral lands, and complainant is informed and believes and therefore alleges, that the said claims or some of them have been patented by the United States to various parties, and that such patents were issued under and by virtue of the statutes of the United States, relative to the patenting of mineral lands upon the public domain.

That as complainant is informed and believes and therefore alleges, the said defendants claim the right to enter upon the premises of this complainant, to wit, that portion of the Pennsylvania Lode claim above described, by reason of the fact that certain veins, leased or claimed by the defendants or in their possession, have their tops or apexes within the ground owned or claimed as a part of the Rarus Lode claim, or a portion of the Johnstown Lode claim, or a portion of the Little Ida Lode claim, and that defendants assert the right to follow such veins on their downward courses or dips although the same so far depart from a perpendicular as to depart from the ground leased or claimed by the defendants, and enter the premises owned or claimed by this

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complainant, to wit that portion of the Pennsylvania Lode claim hereinbefore described.

But complainant denies and disputes the fact that the said veins upon which the said defendants have mined within the lines of the Pennsylvania Lode claim, even if such veins have their apices in the said Rarus Lode claim, or Johnstown Lode claim, or said Little Ida Lode claim, which complainant does not admit, are such veins as can be followed on their dip beyond the lines of the said lode claim and into the ground or premises of this complainant; but alleges the facts to be that the said veins are broken and intersected by faults in such a manner that the same cannot be traced or followed from the said Rarus or Johnstown or Little Ida Lode claims, into the Pennsylvania Lode claim, and that therefore the said defendants have no right to enter upon the ground of this complainant, to wit, the said Pennsylvania Lode claim, for the purpose of extracting ores therefrom by reason of their claim upon or interest in the apices of any veins, within the Rarus or Johnstown or Little Ida Lode claims.

And this complainant further shows that the veins upon which the defendants have been extracting ore within the premises of this complainant, if they or any of them have their apices on the said Rarus or Johnstown or Little Ida Lode claims, which complainant does not admit, do not on their course or strike depart from
79 the end lines of the defendants' claims or possessions, but that the same depart from the side lines of such claims in such manner as to prohibit the said defendants from following the same beyond the said lines of said lode claims into complainant's portion of the said Pennsylvania Lode claim.

That there are several veins which the defendants claim the right to follow on their dip beyond the side lines into the ground of this complainant, the said Pennsylvania Lode claim, but that neither of the said veins in their course or strike depart from the end lines of the said Rarus or Johnstown or Little Ida Lode claims if they have their apices within said lode claim- at all; but complainant alleges that the ground in which the defendants claim some interest as aforesaid, was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States, in such cases, and in consequence of such failure upon the part of the locator or locators of the ground or claims leased or owned by the defendants, to mark the same with end lines parallel, or to locate the same along the veins, but on the contrary having located the same across the veins, the defendants and their lessors or grantors have no extralateral rights in or to any of the veins in their said ground and are not entitled to follow the same into or upon the ground of this complainant, the said portion of the said Pennsylvania Lode claim.

And complainants further show- that a patent was issued by the United States of America to Stanislaus E. Hirbour and others to that certain quartz lode mining claim known as and called the Rarus Lode claim hereinbefore referred to, a copy of which patent is

hereto attached, marked Exhibit "A" and made a part of this complaint.

And complainant further shows that a patent has been granted by the United States of America to William Harris, Sr., and others to that certain quartz lode claim known as and called the Johnstown Lode claim, a copy of which patent is hereto attached,
80 marked Exhibit "B" and made a part of this bill.

And as showing that the questions involved in this controversy are questions arising under the statutes of the United States and involving the construction thereof, complainant shows and alleges that the said defendants herein claim to be the lessees or to have some interest in a portion of the ground patented under the said Johnstown and Rarus patents and that by virtue of the said Rarus patent, that they, the said lessors and grantors have acquired thirteen hundred and eighteen linear feet of what is designated and called the Rarus lode and it is contended by the said defendants that under and by virtue of the said Rarus patent that they and their said lessors and predecessors in interest were granted thirteen hundred and eighteen linear feet of the Rarus lode, extending from what is known as the east end line of the Rarus claim to an imaginary or projected line of the Rarus location.

And complainant further shows that the surface ground patented to the lessors or predecessors in interest of defendants to the Rarus Lode claim does not include to exceed three hundred linear feet of the said Rarus lode as shown in yellow shading on the map attached to the Rarus patent, but notwithstanding the fact that the surface ground granted by the said Rarus patent did not cover or extend over the said Rarus lode the defendants contend and claim that the said patent of the Rarus claim granted to them and their lessors and predecessors in interest the said Rarus Lode claim, beyond the surface ground granted by the Rarus patent, and to the full extent thereof of thirteen hundred and eighteen linear feet; and also contend and claim that by reason of the ownership of the said lode for the length aforesaid, and that by reason of the fact that the same passes through the east end line of the Rarus — as patented and the west end line of the original location of the said claim, that they are entitled to follow said veins on their courses or
81 dips into the earth and without the lines of the Rarus claim, both as originally located and as patented.

Your complainant further shows that a large quantity of the ground which it is claimed by the defendants was originally included within the location of the Rarus claim, has been patented under the said Johnstown patent, hereinbefore referred to and as shown by the portion shaded in yellow on the plat attached to the Johnstown patent. That notwithstanding that a portion of the Rarus location was patented under the Johnstown claim, the defendants contend and claim that only the surface ground of the Johnstown claim was patented to the patentees therein named, and that all veins lying within the original location lines of the Rarus claim were patented to the claimants under the Rarus claim, and that the defendants and their lessors or grantors are entitled to claim the said veins extending

through the Johnstown patent under and by virtue of the Rarus patent and that its extralateral rights should be determined by the Rarus and not by the Johnstown patent.

Complainant further shows that it disputes each and every one of the claims made by the defendants relative to the construction of the said several patents, and claims that all veins whose apexes lie within the Johnstown patent must be governed and regulated in extralateral rights, if any they have, under the Johnstown patent and not under and by virtue of the Rarus patent.

And complainant further shows that the defendants claim that if they have no right to follow the veins within the lines of the original Rarus location, by virtue of the said Rarus patent, that they have a right to follow the same under and by virtue of the Johnstown patent, or the Johnstown and Rarus patents combined, under and beneath that portion of the Pennsylvania Lode claim, belonging to this complainant; but opposed to this contention the complainant contends and insists that the defendants have no right to follow any vein having its apex within either the Johnstown or Rarus patents under any circumstances into or under the Pennsylvania Lode claim at any point of the east of the intersection
82 of the south side line of the Johnstown patent with the south side line of the original Rarus location.

And complainant further shows that the said defendants contend that the complainant cannot under any circumstances obtain any relief for ores extracted within that portion of the premises owned by it, without first showing that the apices of the veins from which the ores were extracted, are within the surface lines of the ground owned and claimed by the complainant, whereas complainant contends that *prima facie* it is the owner of all ores found within its boundaries extended downward into the earth, until it has been shown that some other person or company has some right thereto, by reason of the ownership of the apex of the vein within some other claim.

The complainant further shows that it is claimed by the defendants that the apex of the veins from which the ores in question were extracted is divided in that a portion thereof is claimed by the defendants as a part of the Rarus Lode claim and a portion thereof upon the Johnstown Lode claim and a portion thereof upon the Pennsylvania Lode claim.

And defendants claim that by reason of the said divided apex that they may claim the right to follow the said vein beneath the surface and without the side lines of the Rarus and the Johnstown Lode claims, under and by virtue of either or both of the said claims at their election.

Complainant alleges that if any such vein exists as is claimed by the defendants that they have no extralateral rights by reason of the fact that the same has a divided apex.

Wherefore your complainant prays that the said defendants, Chile Gold Mining Company, John MacGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, their servants, agents, attorneys, clerks, workmen and employees be by this court forever en-

joined and restrained from mining or extracting any ores from within the limits of that portion of the said Pennsylvania
83 Lode claim, hereinafter described, and from removing therefrom any ores which have heretofore been extracted therefrom, and that until the hearing of this application of this complainant for an injunction, and pending the determination of the title to the said premises, that the said defendants, their agents, servants, attorneys, clerks, workmen and employees be restrained and enjoined from mining or extracted ores from within the said portion of the said Pennsylvania Lode claim, hereinbefore described, and from removing any ores which they may have extracted therefrom, or may hereafter extract therefrom.

Your complainant further prays this honorable court to grant unto your complainant not only a writ of injunction conformable to the prayer of this bill but also a writ of subpœna of the United States of America, issuing out of and under the seal of this court, to be directed to the said Chile Gold Mining Company, John MacGinniss, Edward L. Whitmore, Carlos Warfield and Stephen S. Raymond, defendants, commanding them by a day certain to appear before your honors in the court aforesaid, and answer unto this bill of complaint and abide the order and decree of this court, and for such other and further relief as may be meet and equitable in the premises."

That said allegations in said answer of the Chile Gold Mining Company to said bill of complaint are as follows, to wit:

"That it admits that the complainant is a corporation organized and existing under and by virtue of the laws of the State of Montana, with its principal place of business at Butte city, Silver Bow county, Montana.

That this complainant is now and at all time- mentioned in said complainant was a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, Silver Bow county, State of Montana.

Admits that the defendants, Edward L. Whitmore, and
84 Carlos Warfield, are officers of this defendant, The Chile Gold Mining Company, and in charge of its operations and affairs, but denies that said Stephen S. Raymond is or was at the commencement of this suit, an officer of this defendant, or in charge of its affairs.

Admits that the complainant is the owner of the surface ground of that portion of the Pennsylvania Lode claim described in its complaint but denies that the complainant is the owner of or entitled to the lode or vein or any ore bodies, upon which the defendant has entered and from which it has extracted the ores in question in this case, and alleges that the Montana Ore Purchasing Company is a corporation duly organized and existing under and by virtue of the laws of the State of Montana, having its principal place of business at Butte city, in said State, and is the owner of said veins or lodes and ore bodies.

Admits that complainant acquired title to the surface of the Penn-

sylvania Lode claim, by virtue of the several deeds of conveyance set out in its bill of complaint.

Denies that on or about the first day of April, 1895, or at any other time or at all this defendant, Chile Gold Mining Company, wrongfully or unlawfully entered upon or into the premises of the complainant, to wit: the said Pennsylvania Lode claim, described in said complaint by underground workings or tunnels or shafts or cross-cuts, or levels or otherwise or at all, or extracted therefrom large or any quantities of valuable or other ores containing copper, silver or other precious metals, against the will, wish and consent of plaintiff.

Denies that by means of these underground workings or otherwise or at all this defendant has extracted from within the limits of this plaintiff's premises, the Pennsylvania Lode claim, ten (10) thousand tons, or any number of tons of ore more or less of the reasonable value of seventy-five thousand dollars ($75,000) or of any value whatever, or has converted the same to its own use.

Denies that this defendant ever at any time or at all ex-
85 tracted from said Pennsylvania Lode claim any quartz, or ore, or mineral-bearing rock of any kind or description belonging to plaintiff.

Denies that ever since that time or at all defendant has continued to mine and extract ores from said premises belonging to the complainant, or is now extracting ore therefrom, or threaten- so to do, or that it ever or at all mined or extracted ores from said premises belonging to the complainant or threatened to do so, as alleged in plaintiff's complaint, or otherwise, or at all, and denies that it will do so unless restrained by the injunction of this court.

Denies that by reason of said trespass plaintiff has been damaged in the sum of seventy-five thousand dollars ($75,000) or in any sum or amount whatever, or damaged at all, or that this said defendant has not paid the sum or any part thereof.

Denies that the determination of said controversy between the said plaintiff and this defendant, The Chile Gold Mining Company involves the construction of title 23, chapter 6, of the Revised Statutes of the United States concerning mines and mineral lands, or the construction of any other statute or law of the United States.

Admits that the said Pennsylvania Lode claim claimed by plaintiff is a mining claim duly located under the provisions of the statutes of the United States relative to the appropriation of mineral lands, and that the same has been patented as a mining claim under the provisions of the said statute.

Denies that this defendant, The Chile Gold Mining Company, claims to be the lessee of or to have some interest in a portion of that certain lode claim known as and called the Rarus Lode claim, lot number 179, or claimed to have any interest or right to any portion of the Little Ida Lode claim, lot number 126, which said claims lie north of and partly adjoining and near the said Pennsylvania Lode claim on the north.

This defendant admits that it claims to be the lessee and
86 to have an interest in a portion of that certain quartz lode mining claim known as and called the Johnstown Lode

claim, lot No. 173, lying north of and partly adjoining said Pennsylvania Lode claim.

This defendant admits that the said Rarus Lode claim, Johnstown Lode claim and the Little Ida Lode claim are mineral claims located under the laws of the United States, relative to the appropriation and location of mineral lands and that they have been patented by the United States to various parties and that such patents were issued under and by virtue of the statutes of the United States, relative to the patenting of mineral lands upon the public domain.

This defendant d-nies that it claimed the right and entered upon the premises of the plaintiff, to wit: that portion of the Pennsylvania Lode claim described in plaintiff's complaint, by reason of the fact that certain veins leased or claimed by this defendant, or in its possession, have their tops or apices within the ground owned or claimed as a part of said Rarus Lode claim, or a portion of the said Little Ida Lode claim.

Denies that this defendant claims any right whatever under or by virtue of any vein apexing in said Rarus or Ida Lode claims, or claims any right, title, or interest in or to any veins belonging to or the top or apex of which lies within the Rarus or Little Ida Lode claims, but this defendant admits that it claims the right to enter upon the premises claimed by plaintiff, to wit: that portion of the Pennsylvania Lode claim described in complainant's complain*ant*, by reason of the fact that certain veins leased and claimed by this defendant and in its possession have their top or apices within the ground owned and claimed as a part and portion of said Johnstown Lode claim, although the same so far departs from a perpendicular as to depart from the ground enclosed within the exterior line of said Johnstown Lode claim, and enter the premises owned or claimed by the plaintiff, to wit: that portion of the Pennsylvania Lode claim described in plaintiff's complaint.

87 This defendant alleges that the veins or lodes upon which it has been mining within the Pennsylvania Lode claim and underneath the surface thereof, have their top or apex within the lines of the Johnstown Lode claim, as located and patented for the entire length of said claim and running nearly parallel with the side lines thereof and that the same passes on their strike through the end lines of said Johnstown Lode claim, and through both end lines thereof, and runs the full length of said claim as located and patented, and that said lines are parallel, and this defendant further alleges that the veins or lodes upon which it has mined within the Pennsylvania Lode claim have their top or apex within that portion of the Johnstown Lode claim, owned by the Montana Ore Purchasing Company, and leased by it to this defendant, and that the said veins can be followed and have been followed continuously on ore on the dip or downward course from the top or apex thereof within the boundary lines of said Johnstown Lode claim, and within the boundary lines of that portion thereof leased by this defendant into the ground owned or claimed by complainant, to wit, the Pennsylvania Lode claim, and this defendant denies that the veins or ores from which it has been extracting ores within the premises of com-

plainant, to wit, the Pennsylvania Lode claim, are broken and intersected by faults, or otherwise in such a manner that the same cannot be traced or followed from the said Johnstown into and beneath the said Pennsylvania Lode claim, and denies that by reason thereof this defendant have not right to enter upon the ground of plaintiff, to wit, the Pennsylvania Lode claim, for the purpose of extracting ores therefrom by reason of its claim or interest in the apices of any veins within said Johnstown Lode claim.

This defendant denies that the vein or veins upon which it has been extracting ore within the premises of the plaintiff, which have their apices within the Johnstown Lode mining claim, do not in their course or strike depart from the end lines of said Johnstown Lode claim, but depart from the side line of said claim in any
88 manner whatever, or so as to prohibit this defendant from following the same beyond the lines of said Johnstown Lode claim, under plaintiff's portion of said Pennsylvania Lode claim.

Defendants admit- that there are several veins which this defendant claims the right to follow on the dip beyond the side lines of the said Johnstown Lode claim, into the ground of plaintiff, the said Pennsylvania Lode claim, but denies that neither of said veins in their course or strike depart from the end lines of the said Johnstown Lode claim, and denies that said claim was not so located or situated as to have any end lines whatever, as provided by the statutes of the United States, in such case, or that in consequence of such failure upon the part of the locator or locators of said Johnstown Lode claim, leased by this defendant, to mark the same with end lines parallel, or to locate the same along the veins, but on the contrary having located the same across the veins, that the said Montana Ore Purchasing Company, or this defendant as its lessee, has no extralateral rights in or to any of the veins in said Johnstown Lode claim, or are not entitled to follow the same into or upon the ground of plaintiff, to wit, said portion of the said Pennsylvania Lode claim, and this defendant avers the fact to be that said Johnstown Lode claim was so located and patented as to have parallel end lines as provided by the statutes of the United States, and that said claim was located along the vein therein and along the tops or apices of the veins upon which this defendant had been mining in such manner as to entitle this defendant to follow said veins into the earth on their dip although they may so far depart from said Johnstown Lode claim, in their downward course as to pass beyond the side lines thereof and enter beneath the surface of said Pennsylvania Lode claim.

This defendant admits that a patent was issued by the United States of America to Stanislas E. Hirbour and others, to that certain quartz lode mining claim known as and called the Rarus Lode mining claim, and that a copy of said patent is attached to
89 plaintiff's complaint, and marked Exhibit 'A.'

Defendant further admits that a patent has been issued by the United States of America to William Harris, Sr., and others to, that certain quartz lode mining claim known as and called the Johns-

town Lode mining claim, and that a copy of said patent is attached to plaintiff's complaint and marked Exhibit 'B.'

This defendant admits that it claims to be a lessee and to have an interest in a portion of the ground patented under the said Johnstown Lode claim, but denies that it has or claims any right whatever, or interest in any portion or part of the ground patented as the Rarus Lode claim, and denies that this defendant, as such lessee, or otherwise, or at all, has acquired or claimed to acquire, thirteen hundred linear feet of what is designated or called the Rarus Lode claim, or any other number of feet belonging to said Rarus Lode claim.

This defendant does not know and does not claim to know how much surface ground was patented to the Rarus Lode claim, and had no knowledge in regard thereto from which it can form an opinion.

This defendant further represents that as it claims no right title, or interest whatever, as lessee or otherwise, in or to any part or portion of any ground or any lode or veins which have their apices in or belonging to said Rarus Lode claim, that it is immaterial so far as this defendant is concerned, how much ground was really patented and granted in the patent by the Government of the United States to the said Rarus Lode claim.

This defendant admits that a large portion of the ground which was originally included within the location of the Rarus claim, has been patented under the said Johnstown patent and defendant denies that it contends or claims that only the surface ground of the Johnstown claim was patented to the patentee therein or that all or any vein lying within the original location lines of the Rarus claim were granted by the Rarus patent, and denies that it
90 claims, or contends, that it is entitled to claim the veins extending through the Johnstown claim under or by virtue of the Rarus patent, or that its extralateral rights should be determined by the Rarus patent and not by the Johnstown patent, but defendant alleges that it contends and claims that its extralateral rights to the veins in question should be determined by the ownership of the Montana Ore Purchasing Company, and by this defendant's lease from said company of that parcel of ground now included within the Johnstown claim, and leased by the owner thereof to this defendant and not by the Rarus lode or patent, for the reason that said veins or lodes have their tops or apices within the ground belonging to said Johnstown Lode claim, and leased to this defendant by said owner thereof.

This defendant admits that so far as it is concerned extralateral rights to which it is entitled, and its right to follow the veins the apex of which is in the Johnstown Lode claim, to the point where the ore sued for in this case was extracted, should be governed and regulated by the rights conveyed by the United States in the Johnstown patent, and not under or by virtue of the Rarus patent, or any part thereof, or any veins belonging thereto; and defendant denies that it contends it has a right to follow said veins or any of them in their downward course by reason of the Johnstown and Rarus patents

combined, and denies that this defendant has no right to follow any vein having its apex within the Johnstown Lode claim under any circumstances into or under said Pennsylvania Lode claim at any point east of the intersection of the south side line of the Johnstown patent to the side line of the original Rarus location.

This defendant denies that it contends, or claims that the plaintiff cannot, under any circumstances, obtain any relief for ores extracted within that portion of the premises owned by it without first showing that the apices of the veins from which the ores were extracted are within the surface lines of the ground owned and claimed by
91 plaintiff and admits that *prima facie* plaintiff is the owner of all ores within the boundaries of its claim, extended downward vertically into the earth until it has been shown that some other person or persons has some right thereto by reason of the ownership of the apices of the veins within some other claim.

Defendant denies that it is claimed by this defendant that the apex of the veins from which the ores in question were extracted is divided in that a portion thereof is claimed by the Rarus Lode claim, and a portion thereof by the Johnstown Lode claim, and a portion thereof by the Pennsylvania Lode claim, but this defendant avers the fact to be that it only claims a right to such veins as apex within that portion thereof claimed by the Montana Ore Purchasing Company, in the Johnstown Lode claim; and this defendant denies that it claims by reason of a divided apex that it may claim the right to follow the said vein or any vein beneath the surface and without the side lines of the Rarus and Johnstown Lode claims, under and by virtue of either or both of said claims, or patents, and at its election or at all.

Defendant denies that if any such vein exists, that it is claimed by this defendant, that it has any extralateral rights by reason of the fact that the same has a divided apex.

This defendant denies that there is involved in this suit, or the matter in controversy between plaintiff and this defendant, numerous or any Federal questions named in said complaint, or at all, and denies that there is involved the construction of the statutes of the United States, relative to the locating, purchasing or patenting of mineral lands or their construction of such statutes relative to the right of one claimant to follow veins down to and into the premises of another under the circumstances and situations of the parties in this action, or the construction of said statute in relation to the patenting of claims or whether the vein can be patented to one person and the surface to another, or to the right of the Land Depart-
92 ment to segregate the surface of the mineral in the ground, granting one to one person and the other to another, and as to whether said action is authorized under and by virtue of said statutes, and also as to whether, when an apex of a vein is divided on the surface, part being within the premises granted in one patent and a part within another as to what, if any, extralateral rights are granted under said circumstances.

Defendant denies that the construction of any law of the United States or any Federal question whatever is involved in this suit.

This defendant avers that there is no controversy between the complainant and this defendant in this action, about any of the matters or things suggested or stated by the complainant for the purpose of showing that this court has no jurisdiction. This defendant therefore asserts that this court has no jurisdiction of the subject-matter of this action, or the controversies between the complainant and defendant herein."

The court further certifies that upon the said bill of complaint, and the said answer thereto, this court sustained said application to dismiss and entered a decree of dismissal in accordance therewith, holding that a Federal question was not presented by said allegations and that in consequence thereof there was no jurisdiction in this court in said action. The court further certifies that the amount involved in said controversy as shown by said bill of complaint was in excess of two thousand dollars, exclusive of interest and costs.

Done this 30 day of March, 1899.

HIRAM KNOWLES,
Judge of said Court.

Endorsed: Title of court and cause. Filed & entered, March 30, 1899. Geo. W. Sproule, clerk. By Chas. W. Blair, deputy clerk.

93 And thereafter to wit, on the 16th day of March 1901 an assignment of errors was filed herein in the words and figures as follows, to wit:

94 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
vs.
CHILE GOLD MINING COMPANY, a Corporation; JOHN MacGinness, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants. } No. 66.

Assignment of Errors.

Comes now the complainant in the above-entitled cause and assigns errors in the decision and decree of the circuit court in the above-entitled cause, as follows:

I.

In dismissing the said action and entering the final decree in favor of the defendants for its costs against the complainant the court erred.

II.

The court erred in holding that it had no jurisdiction of the subject-matter and parties in the above-entitled action and in dismissing the complainant's bill upon motion of the defendants.

In order that the foregoing assignment of errors may be and appear of record, the complainant presents the same to the court and prays that such disposition be made thereof as in accordance with the law and statutes of the United States in such cases made and provided, and complainant prays a reversal of the decretal order and decree of dismissal made and entered by said court.

JOHN F. FORBIS AND
L. O. EVANS,
Of Butte, Montana, Solicitors for Complainant.

Service of the foregoing by copy is hereby acknowledged
95 this 15th day of March, 1901.

McHATTON AND COTTER,
Solicitors and of Counsel for Defendant.

Endorsed: (Title of court and cause.) Assignment of errors. Filed and entered March 16th, 1901. Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of March, 1901, a petition for allowance of appeal was filed herein which is in the words and figures as follows, to wit:

96 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant, *vs.* CHILE GOLD MINING COMPANY, a Corporation; JOHN MACGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants.	No. 66.

Petition on Appeal.

To the Honorable Hiram Knowles, district judge and one of the judges of the above-named court, presiding therein:

The above-named complainant, in the above-entitled cause, Boston and Montana Consolidated Copper and Silver Mining Company, conceiving itself aggrieved by the order and decree made and entered by the above-named court in the above-entitled cause, under date of March 29, 1899, wherein and whereby among other things, it was and is ordered and decreed that this action be dismissed for the reason that the court has no jurisdiction of the subject-matter or parties to this action and that the defendants have and recover of the complainant *its* other costs of suit, and do hereby appeal to the Supreme Court of the United States from said decree; and plaintiff prays that this its petition for its said appeal may be allowed and that the transcript of record, proceedings and papers upon which

said order was made, duly authenticated, may be sent to the Supreme Court of the United States.

Dated this 15th day of March 1901.

JOHN F. FORBIS &
L. O. EVANS.
Of Butte, Montana, Solicitors for Boston and Montana Consolidated Copper and Silver Mining Company, Complainant.

97 Service of the foregoing by copy is hereby acknowledged this 15th day of March, 1901.

McHATTON AND COTTER,
Solicitors and of Counsel for Defendants.

Endorsed: (Title of court and cause.) Petition on appeal. Filed and entered March 16, 1901, Geo. W. Sproule, clerk.

And thereafter, to wit, on the 16th day of March 1901 an order allowing an appeal herein was duly made, entered and filed herein in words and figures as follows, to wit:

98 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
vs.
CHILE GOLD MINING COMPANY, a Corporation; JOHN MACGinness, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, Defendants. } No. 66.

Order Allowing Appeal.

At a stated term, to wit, the February term, A. D. 1901, of the circuit court of the United States of America, of the ninth judicial circuit, in and for the district of Montana, held at the court-room in the city of Butte, county of Silver Bow, on the 16th day of March, 1901.

Present: Honorable Hiram Knowles, United States district judge.

On motion of Forbis and Evans, solicitors and of counsel for the complainant, it is ordered that an appeal to the Supreme Court of the United States from the final decree heretofore filed and entered herein, be and the same is hereby allowed, and that the certified transcript of the record, testimony, exhibits, stipulations and all proceedings herein, be forthwith transmitted to the Supreme Court of the United States. It is further ordered that the bond on appeal be fixed at the sum of five hundred dollars, as a bond for costs and damages on appeal.

Dated the 16th day of March, 1901.

HIRAM KNOWLES,
District Judge.

Endorsed: (Title of court and cause.) Order allowing appeal. Filed and entered March 16, 1901. Geo. W. Sproule, clerk.

99 And thereafter, to wit, on the 16th day of March 1901, a bond on appeal was duly approved and filed herein which is in the words and figures as follows, to wit:

100 In the Circuit Court of the United States, Ninth Circuit, District of Montana.

BOSTON AND MONTANA CONSOLIDATED COPPER AND SILVER Mining Company, Complainant,
vs
CHILE GOLD MINING COMPANY, a Corporation; JOHN MACGINNISS, EDWARD L. WHITMORE, CARLOS WARFIELD, and STEPHEN S. RAYMOND, Defendants.
} No. 66.

Bond.

Know all men by these presents: that we, the Boston and Montana Consolidated Copper and Silver Mining Company, a corporation, as principal, and Alex J. Johnston and J. K. Heslet as sureties, are held and firmly bound unto the Chile Gold Mining Company, a corporation, John MacGinniss, Edward L. Whitemore, Carlos Warfield and Stephen S. Raymond, in the full and just sum of five hundred dollars, to be paid to the said Chile Gold Mining Company, a corporation, John MacGinniss, Edward L. Whitmore, Carlos Warfield and Stephen S. Raymond, their attorneys executors administrators or assigns, to which payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 15th day of March in the year of our Lord one thousand nine hundred and one.

Whereas, lately at a session of the circuit court of the United States, ninth circuit, district of Montana in a suit pending in said court, between the said Boston and Montana Consolidated Copper and Silver Mining Company, complainant and The Chile Gold Mining Company, a corporation, John MacGinniss, Edward
101 L. Whitemore, Carlos Warfield, and Stephen S. Raymond, respondents, the decree was entered against the said Boston and Montana Consolidated Copper and Silver Mining Company and the said company having obtained from said court an order allowing an appeal to the Supreme Court of the United States to reverse the decree of the aforesaid suit, and a citation directed to the said Chile Gold Mining Company, John MacGinniss, Edward L. Whitemore, Carlos Warfield and Stephen S. Raymond is about to be issued citing and admonishing them to be and appear at the Supreme Court of the United States to be holden at the city of Washington,

Now the condition of the above obligation is such that if the said Boston and Montana Consolidated Copper and Silver Mining Company shall prosecute its said appeal to effect, and shall answer all damages and costs that may be awarded against them, if they fail to

make their plea good, then the above obligation to be void; otherwise to be and remain in full force and effect.

ALEX J. JOHNSTON.
J. K. HESLET.

Sufficiency of sureties on the foregoing bond, approved the 16th day of March 1901.

HIRAM KNOWLES, *Judge.*

Bond on appeal. Filed and entered Mar. 16, 1901. Geo. W. Sproule clerk.

And thereafter to wit, on the 16th day of March 1901 a citation was duly issued herein which is hereto annexed.

102 *Citation.*

The President of the United States to the Chile Gold Mining Company, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond, and Stapleton & Stapleton, their attorneys, and to John MacGinniss and John J. McHatton, his attorney, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held at the city of Washington, within sixty days from the date of this writ, pursuant to an appeal filed in the clerk's office of the circuit court of the United States, for the district of Montana, wherein The Boston and Montana Consolidated Copper and Silver Mining Company, is the plaintiff, and you are the defendants in error, to show cause, if any there be, why the judgment in said appeal mentioned should not be corrected and speedy justice should not be done the parties on that behalf.

Witness the Honorable Hiram Knowles, judge of the district court of the United States of America, district of Montana, this 16th day of March, 1901, and of the Independence of the United States the one hundred and twenty-fifth.

HIRAM KNOWLES,
United States District Judge, Presiding in the Circuit Court.

Attest:

{Seal United States Circuit Court, District of Montana, Southern Division, 1892.}

GEO. W. SPROULE, *Clerk.*

Due service of the foregoing citation on appeal, admitted by copy, at Butte, Montana, this 16th day of March, 1901.

JOHN J. McHATTON,
JOHN N. COTTER,
Attorneys for Defendants.

103 [Endorsed:] 66. In U. S. court. B. & M. Con. C. & S. M. Co. *v.* Chile G. M. Co. *et al.* Citation. Filed and entered Mar. 18 1901 Geo. W. Sproule, clerk. By T. B. Stephens, deputy clerk.

104 UNITED STATES OF AMERICA, }
District of Montana, } ss:

In the Circuit Court of the United States, Ninth Circuit, District of Montana.

I, George W. Sproule, clerk of the United States circuit court for the district of Montana, do hereby certify and return to the honorable the Supreme Court of the United States, that the foregoing volume, consisting of 104 pages, numbered consecutively from 1 to 104 inclusive, is a true and correct transcript of the pleadings, certificate of question of jurisdiction orders, exhibits and other proceedings had in said cause and of the whole thereof, as appears from the original records and files of said court in my possession; and I further certify and return that I have annexed to said transcript and included within said paging the original citation.

In witness whereof I have hereunto set my hand and affixed the seal of said court, at Helena, in the district of Montana, this 6th day of May, in the year of our Lord one thousand nine hundred and one, and of the Independence of the United States the 125th.

[Seal United States Circuit Court, District of Montana, 1890.]

GEO. W. SPROULE, *Clerk.*

Endorsed on cover: File No. 18,176. Montana C. C. U. S. Term No. 330. The Boston and Montana Consolidated Copper and Silver Mining Company, appellant, *vs.* The Chile Gold Mining Company, John MacGinniss, Edward L. Whitmore, Carlos Warfield, and Stephen S. Raymond. Filed May 21, 1901.